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v. Procedure in witchcraft cases

Whenever someone is very ill there is anxious speculation among relatives and neighbours as to the cause of the illness. If witchcraft is suspected—and witchcraft is thought to be by far the commonest cause of sickness and death—people begin to whisper (*ukuheha*) that so and so is responsible. Even if the trouble is only a sudden fall in the milk supply there are whispers about witchcraft and the identity of the witch. Then the neighbours meet and complain (*ukwijaja*), or else the leader of the village-section, or even the headman of the village, takes the initiative and, summoning his people, admonishes them. The object of such complaint and exhortation is to warn off the witch. 'People speak very angrily, then the witches are ashamed within themselves, and stop their witchcraft, because they die of shame.' If the warning is effective—that is if the patient or the cows recover—the case will be dropped; but if the trouble continues then the village proceeds to the discovery of the witch. Mwaisumo explained: 'If sickness occurs, the village headman will call his people round him and say: "This village is not right, disease is killing the people, there must be someone who is bewitching them. We warn him to stop!" Then, if he does not stop he will call the people round him again and say: "Well, we must drive him away." Then they discuss their dreams with the headman, it is always by their dreams that they find out the witch, no other way.' A case was quoted in which the milk yield of a village had diminished and the villagers had 'called one another' to come together to complain. While they were complaining a 'defender' called out: 'I have seen the one who is throttling the cows; come together again to-morrow, and no one must stay behind.' When they met the next day one man called the names of each villager in turn, and 'the defender' responded to each with 'Yes', until 'Mwasalutaba' was called. Then he was silent. The name was called three times, and at the third time the whole company groaned. Mwasalutaba got up and, denying the accusation, appealed to the ordeal. He was found guilty by it and was driven from the village (cf. Document, pp. 241–3).

Mwakwelebeja, himself a commoner credited with the power of discovering witches in dreams, made a revealing comment on

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the discovery of witches. He said: 'The witches betray themselves. When we are sitting discussing the witches throttling people, we may notice one looking nervous and glancing sidelong at his friends, then we, who are innocent, know that he is the man.' Certainly a suspect is closely watched, and if he shows anxiety, or fails to join in the condemnation of witches and the expression of good will, this is brought up against him, as the following case shows.

'A certain man called Mwakagugu had a guest staying with him; a soldier on leave. Now this soldier was in the habit of calling in the neighbours to eat when his wife cooked a meal, and M. was always angry in his heart, wishing to eat alone with his guest. When the soldier invited in other people M. would refuse to join them. (The soldier was correct, according to Nyakyusa custom, in what he did. It is good to call in friends to eat.) On one occasion the soldier bought some beer and a crowd of men were drinking it, in another house, not M.'s; but they took a dry bamboo from M.'s place as firewood, to heat the water for the beer. Then M. was very angry indeed and asked: "What do you mean by taking my bamboo?" And his neighbours silently criticized him, thinking "Our friend here has not even bought this beer, and then he gets angry when we take his bamboo!" Another day when the soldier killed a bullock and gave a leg of the meat to some guests of his who were present his child fell ill, its ear swelled up and burst, and it screamed with pain. Later, a neighbour's wife cooked some porridge for her husband without any relish so when she brought the porridge to where the men were sitting, the soldier called to his own wife to bring a chicken she had cooked, as relish, and he offered it to the other men, eating none himself. Again, on yet another occasion, when his wife brought him his porridge she called M. to join him; but M. laughed and said: "Let them (the soldier and his other friends), eat it by themselves." This was the woman's story. And then straight away they were startled by the child screaming and refusing to lie down.

'So then all the neighbours gathered together and gave expression to their anger (*ukwijaja*), asking themselves the cause of the sickness, and why it was that it always became apparent when they were eating. "If the man in question" they said, naming no one, "does it again, we will expel him from the country!" As

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soon as this was over M. at once began to whisper to a friend: "Why do they ask about this sickness, and all the other sicknesses we have they say nothing about? When we are ill is that not an illness?" His friend answered: "It is taboo to speak like this, they will hear you!" And when M. went on whispering he said: "Get out of my house." When the others heard of this they drove M. away, saying that it was he who was making the child sick. And that night the child's illness reached its height, and was worse than ever before.'

(In reply to question): 'At first when they met to express their anger they knew it was M. but feared to accuse him openly. When, however, he began to whisper they feared no longer and said openly: "You are a witch!" The headmen have forbidden all private whispering about witchcraft, as distinct from a formal public gathering to express anger; so that when his friend said to M.: "It is forbidden to speak like this", this was what he referred to. What he meant was: "Why did you not say this openly if it pains your heart? Now you seem to be making the illness worse!" In other words, the object of the open expression of anger was to warn M. off, but by continuing to whisper himself he showed that he had not repented. He was still angry. If he had said nothing they would not have expelled him.

'After M.'s neighbours had driven him from his home (by word of mouth only) he moved, but the village headman, Mwambuputa, brought him back to a different part of his village, not to the section of it (*akapanga*) where M. had previously built; he put him in the house of one of his men. Then his neighbours grew angry asking why Mwambuputa, who himself had forbidden murmuring, had brought back one whom they had convicted of witchcraft! So they went to Mwambuputa's place and expressed their anger to him. Then he agreed to go and expel him. I who recount the case, went with them.

'When we reached the house where M. was staying the assistant headman of M.'s old section, Mwakyandwike, stood out and said: "I have a word to say to my father Mwambuputa. I am astonished that you received back M. after I had driven him away because he is an evil man who does not like to have friendly dealings with us his neighbours." Then Mwambuputa replied: "When I fetched him back I did not know you had convicted him of witchcraft, I thought he was simply moving." "Yes,"

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754 627 replied the other, "that is why I have followed him, for your house is my home! If you love M. you too will be expelled!" And the others said: "Had you known about the case, we should have expelled you both!" "Let us tell him then", said Mwambuputa. But M. was not in the house and had to be fetched. When he came Mwambuputa said: "Your neighbours have followed you saying that they have expelled you. You have done some evil, have you not? I, when I received you, did not know of this, I thought you were just moving." "What is their reason for driving me away?" asked M. "That I've not yet asked them, we will ask them together." Then one man said: "You M., when you moved, why did you move?" M.: "The reason was this, our child (*sic*) at home was sick and we met to express our anger; after this I said to a friend, 'Why do they express their anger and say some one of us has eaten the child for there is a great deal of fever about and many children are sick?' This I said, and then found my friends said I was the witch. 'We expel you' they said, so I moved." "Yes," they said, "you knew yourself to be a witch, why else did you not show indignation and surprise and take your friends to Mwambuputa to be tried? Now you've given them power, and they have followed you here!" Another said: "If your friends drive you from the village will you be obstinate?" Then Mwambuputa said: "No more words, leave the village, your fellows tell you to go!" '

754 783 M. condemned himself in the eyes of his neighbours by suggesting that their hinted accusation was false, after they had gathered to express indignation; and here we come to one of the essential points in the Nyakyusa concept of witchcraft. A witch may repent; if he does repent he is no longer a danger to the village, but an asset, since as a witch he has the power to defend the village as well as to attack; and *admission of guilt is taken as a sign of repentance*. The Nyakyusa hold that a witch is always conscious of his evil activity and they have no ritual expressions of good will such as the Zande blowing on chicken wings, but they stress the obligation of a suspect to admit guilt, either directly or by implication. It is said that in the past, if a suspect admitted guilt, he was not driven out. Very few people, however, do admit guilt; the only case we traced was that of a labourer on the Lupa gold-fields who was accused by his fellows of harming the eyes of one of the gang, who had just discovered a large

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nugget of gold. This 'witch' was actually expelled from the camp by his fellows, but Nyakyusa, commenting on the case, remarked that had it occurred in one of the home villages, he would only have been fined. 754 783

Sometimes a case begins with the startling shout of 'a defender' in the night, who claims to have seen in his dreams that a witch is attacking either himself or a fellow villager. 'A man who dreams of fighting, or being beaten, will sometimes wake up in the middle of the night and go out of his house and shout: "You, so and so, why do you come and fight with me?" But often he will not mention the name then, but waits till the morning when his friends will come and ask him: "Why were you shouting last night?" Then he tells them the name of the man he dreamed of, and if another man dreams of him in the same way the next night or later, then they say he is a witch.' Such a case was described by Mwaikambo: 'A certain man, Kololo, dreamed of his fellow, and in the morning he called out on the road, "I dreamed of so and so, we fought with him in the night, he was throttling me." So his fellows came to his help and said to the accused man: "You, Moses, we have caught you, move elsewhere!" So Moses [who was a pagan, despite his name] moved to another village in the same chiefdom, that of Korosso.' 754 787

Occasionally a witch reveals himself by threatening a neighbour with whom he has quarrelled, using the stereotyped phrases: 'You *may* sleep or you may not' (*Uligona*), or 'What are you?' (*Uligwaki*), or 'Something may happen!' Here is an actual case as reported to us: 'Mwantibe once ordered a boy, the son of a village neighbour, to go on a message for him, but the boy refused, though it is customary for men to send their neighbours' sons on messages. Then Mwantibe got angry with him and snatched his cloth away, saying in anger: "You, boy, something may happen!" implying that the boy would fall ill. The boy fell ill that very evening, and died shortly afterwards. Mwantibe hurried to return the cloth, but the boy's people drove him away with it saying: "What sort of sorrow have you? Are you pretending, so that we shall not suspect you?" For they said it was he who had "eaten" the boy.' 754

The cases quoted so far all involve a direct accusation of witchcraft against the suspect, but sometimes he is compelled to move without ever being accused face to face. Mwaisumo ex- 754 627

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754 plained: 'The men of the village cut a banana stem and wrap banana leaves round it, and go at night and put it in front of his
● 627 door; they also pull some of the thatching off the roof and put it with the banana stem. They do this without ever accusing him to his face of being a witch. Then, in the morning, when others pass by, they notice and say to each other: "See, he has been caught, he is a witch!" In the fields men will call out to one another, saying: "Have you heard? So and so has been caught as a witch?" They will call out where he can hear them, and he cannot stand it. He will go away to another chief.'

Instead of using a banana stem his neighbours may barricade his doorway with thorns while he is out. 'This symbolizes', Mwaikambo said, 'that we (your neighbours) wish to spear you; because, if you try to pass, the thorns will spear you. But we have left you, get out!' Or, as another informant explained: 'The thorns are the hearts of men, symbolizing that the men are all angry.' Occasionally, it is said, a brave man will clear away the thorns and remain, but his neighbours whisper about it and later on they will barricade his doorway again, and he will move. Placing the banana stem, or the thorns, is a joint action by the neighbours—should an individual do it on his own his neighbours will bring a charge against him. One informant suggested that the procedure is a new one developed to avoid making a direct accusation of witchcraft, which is a punishable offence under European administration; but this is doubtful.

622 The following case illustrates not only the practice of barricad-
627 ing the doorway of a supposed witch, but also the responsibility
754 of headmen for the defence of the village, together with the belief that a witch may throttle his own child. 'Nsekela was an assistant headman in the village of Mwambuputa, appointed by Mwambuputa himself. Nsekela's child cried by night and Mwambuputa was angry with him because he did not report the matter. "Why did you not tell me that your child was ill here? Why do you hide it? Indeed you are bad, it is you who are making the child ill, get out of our country!" Nsekela watched over a village-section, he was Mwambuputa's assistant, therefore it was that Mwambuputa said: "Why do you hide the fact that your child is ill here, you my assistant? Indeed you have bewitched it yourself." Nsekela denied the charge saying: "It is not I. No!" Then he went away to Selika about a case. While he was away his neighbours

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barricaded his doorway with thorns. On his return he found them, and he moved to Mwaihojo's country (the adjoining chiefdom).'

Often an accusation of witchcraft is made without resort to divination at all: the behaviour of the accused (as in the cases quoted on pp. 110–13) or the word of 'the defender', is taken as evidence. But if there is doubt as to the identity of the witch, the patient or his family may consult a diviner (*undagusi*),[1] putting before him the names of persons they suspect. Whatever the grounds of accusation, however, it was normally confirmed by the *umwafi* ordeal, if the accused did not admit guilt. The chief might order a suspect to go to the ordeal, or a man or woman accused by his neighbours would appeal to the ordeal, when denying the charge. In such a case the accuser and accused first went to the chief to report and get official witnesses, then, accompanied by these witnesses and other friends, they went to a doctor who had a store of a certain medicine, *umwafi*, and there, at his homestead, they drank the *umwafi* together. Those who failed to vomit were judged guilty. The procedure was described by a number of witnesses (*vide* Documents, pp. 241–6). The accuser and the accused, each accompanied by supporters, go to the doctor, who warns them not to drink if what they have said is false. The doctor sprinkles powder into tepid water and gives the accuser and the accused the infusion to drink. He addresses the *umwafi*, and the supporters address each their own friend. Then, when one vomits his (or her) supporters applaud trilling,[2] and they go home, the man who vomited paying the doctor. Mwandesi described how after one of the two had vomited the other would sit tense and miserable, quite still. He would be left alone awhile, but later the doctor would try to make him bring up the poison: 'Should a man die?' they said. Only rarely, it seems, did anyone die of drinking *umwafi*.

If the accuser failed to vomit he was judged guilty of witchcraft himself; if neither vomited both were judged guilty; if both vomited the accuser was fined, paying two or more cows to the accused in compensation for slander. If he had no cows he might give a girl in marriage.

[1] For the methods of divination see Godfrey Wilson 'An African Morality', *Africa*, Vol. IX (1936), p. 80.

[2] A high-pitched *ulu-ulu-ulu* expressing praise and triumph.

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754 Sometimes the individuals concerned did not actually take the ordeal themselves, but each was represented by one of his or her
• 627 children, as when Mwaisumo's mother was accused of bewitching
695 the village cows, and one of her younger sons drank the *umwafi* representing her (cf. Document, p. 241). Very often the ordeal was used to discover which *group* was responsible for the trouble, whether it was the father's people or the mother's, or perhaps the village, and a child was chosen to represent each group and given the poison. Mwaisumo himself had drunk *umwafi* as a child, representing his father's people (cf. Document, p. 244). And a sceptic explained that each family chose a member who vomited readily—his family was always represented by a certain daughter who vomited *umwafi* immediately.

The ordeal is only administered nowadays in the greatest secrecy, and probably very rarely, for informants who had no hesitation in discussing with us witchcraft accusations and trials of supposed witches, though these were well known to be illegal, denied that the ordeal was administered. The most recent example we traced occurred in 1932.

763 So far we have only dealt with cases in which witchcraft is
787 suspected as the cause of illness among men, or of a decrease in
754 the milk supply. The matter is more serious if someone has actually died. If there is any doubt as to the cause of death, an autopsy is performed, and a diagnosis made from the condition of the stomach and intestines. 'Wounds' or scars in the stomach are taken as evidence of attacks by witches, and a black oily substance in the bowel, or red streaked with black and white, is a mark of sorcery; if the bowel is swollen, or if the entrails burst out of the incision, it is proof that the deceased was himself a witch, and was probably killed in a quarrel with fellow witches. Death due to a relative having been bound with ropes (cf. Document, p. 249), or a disease of the bowels (*ikitatya*) attributed to natural causes, is also thought to be apparent at an autopsy. Some maintain too, that the source of witchcraft can be discovered from the examination, wounds on the right side of the stomach indicating that the witch is a member of the father's family, or of the age-village; wounds on the left indicating that he is a member of the mother's family (cf. Document p. 246).

At the autopsy the crowd is kept at a distance and usually only one or two senior relatives or neighbours, the headman of the

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his village headmen. In some villages the 'elder' is both a religious leader and a secular authority, but there is a tendency to separate the two offices and to appoint a 'peacemaker' whose duty it is to settle disputes, collect taxes, and represent the village in its relationships with the chief and the administration, while the 'elder' confines himself to watching over the spiritual welfare of his people. Such division of authority is symptomatic of the growing differentiation of Nyakyusa society.

e. Witchcraft, medicines, and the British administration

Under British administration the use of the *umwafi* ordeal, imputation of witchcraft, intimidation or obtaining goods under false pretences by threats of witchcraft or sorcery, or offers of protection against them, are punishable offences. As we have seen, the ordeal is now administered only in the greatest secrecy, and probably very seldom, but accusations of witchcraft are frequent, and are even heard before the Native Courts, though not recorded (*vide* Document, p. 257). In the villages near the Government station more caution is observed in making accusations than in more remote parts of the district: very often the identity of the witch is only hinted at, or thorns are piled at his door by persons who remain anonymous (*vide supra*, p. 114) so that no individual can be convicted of imputing witchcraft. As one man put it: '"The defenders" see the witches, but cannot name them to anyone.' Autopsies continue in conservative villages but they are no longer performed on every corpse, as is said to have been customary in the old days. The chief Porokoto, himself a sceptic, argued that it was no use performing an autopsy when a charge could not be laid. If the members of a village are all convinced that a particular fellow is a witch he is forced to move, since his unpopularity becomes intolerable to him (*supra*, pp. 110–5). As Mwambuputa put it: 'We don't like him, and he doesn't like us either: he does not enjoy our company (*atikwangala na mwe*), so he moves.' But if the friction is only between two individuals, the supposed witch may brazen it out, for without resort to the *umwafi* ordeal there is no sure means of deciding between the accuser and the accused.

The prohibition of witch-finding is not accepted as right and just: the common view is that the Europeans 'protect the witches',

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CHAPTER VI

THE MAINTENANCE OF ORDER

626 VARIOUS forms of social pressure which serve to maintain order in the village have already been discussed: economic reciprocity, the need to be approved, and a supposed mystical interdependence are the foundation of order. We have shown that neighbours depend upon each other for help in many undertakings, that prestige accrues to affability and generosity, that men fear to shock their neighbours lest sickness fall on them, and that they admonish their children not to be proud and quarrelsome lest they be accused of practising witchcraft. The desire for prestige and the fear of sickness, or of gaining the reputation of being a witch, directly modify behaviour towards neighbours. Nevertheless, disputes between fellow villagers occur, and there is a regular legal mechanism for dealing with them.

a. Arbitration

• 627 The Nyakyusa set great store on arbitration by a friend. It is common practice for individuals who have quarrelled to state their dispute before a respected friend and ask for his opinion on the case. The statement is made in public and any man who happens to be present may offer an opinion. There is no attempt to hush up a quarrel—rather it is held that the expression of it paves the way for reconciliation—and the emphasis is laid on arriving at a settlement which is agreed to by both parties. Arbitration of this sort begins in the herd-group when two small boys will take their dispute to a fellow, the leader of their group, and the practice continues throughout their lives in the villages of youths, mature men, and elders. The respected friend to whom the case is first submitted is most often the leader of the village-section to which one or both parties to the dispute belong. But he need not necessarily be an appointed leader; any respected man may be asked to arbitrate. If his decision is not accepted by

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both parties, or if he declares the case too difficult and refuses to give an opinion, then it is taken to the headman of the village. Should the headman fail to settle the dispute, it goes to the senior headman of his side of the chiefdom, thence to the chief sitting with his headmen, and nowadays it may go on through the Native Court, and the Native Appeal Court, to the District Officer sitting with native assessors, the Provincial Commissioner, and the High Court of Tanganyika.

Village headmen neither have, nor had, power to enforce their decisions; such power lay with the chief alone in the old days—he would send some of his junior kinsmen and men from his capital (*ikitangalala*) to execute judgement—and he alone could order the parties to a dispute to drink the poison ordeal, from which verdict there was no appeal. Nor is a village headman or other arbitrator paid a fee—a pot of beer or a hoe from the plaintiff to 'open the case', and beer (or occasionally a bull) as a thank-offering from the party for whom judgement was given, were the perquisites of a chief alone. The arbitrator's reward is prestige—the honour and respect of his fellows. As we have said, a case may be submitted to anyone for arbitration and no slight to the existing authorities is thereby implied; but if cases are constantly taken to some individual in the section other than himself, a section leader may grow jealous. We heard of one who was reputed to have tried to poison a new-comer to his section, a Christian, who was hospitable and became so popular as an arbitrator that the appointed leader feared lest he might lose all his authority. The hospitable man is respected and his fellows often ask for his opinion on a case as they sit together over a pot of beer.

But though village headmen cannot enforce their decisions, they are not to be ignored. An individual does not take a case direct to the chief; usually his village headman takes it to the senior headman of the side,[1] and the latter then takes it to the chief. Both will have heard something of the case and, if it is not regarded as 'too difficult', will have attempted to reconcile the

[1] It appears that a village headman *should* proceed through the senior headman of his side, but in Porokoro's chiefdom procedure was modified by the fact that there had been no 'coming out' ceremony. There Mwafula, the headman of a junior village, brought cases direct to the chief (*vide infra*, p. 146). It was modified also in Mwaipopo's country by the absence of Mwanasumbe, one of his two senior headmen (*cf.* Document, p. 181).

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parties before referring the matter to the chief. And any decisions they may have reached are reported to the chief.

Disputes between members of a boys' village may be settled by the leader of their village, but more serious cases go to the headman of their fathers' village, and may proceed through him to the senior headman of the side. Old men go to their own headmen, but there is an appeal to the senior headman of the ruling generation, on the side in which they live, except in inheritance cases. In these the old men are the ultimate authority. Christians living in sections of pagan villages take their cases to their section leader—himself a Christian, whose position is comparable to that of a pagan assistant headman. Thence a civil case goes to the village headman, but where an offence against the Christian code is involved (as in theft, or adultery, or wife-beating) the case also comes before the court of the congregation, consisting of the minister, elders, and deacons. Disputes between members of Christian villages established on mission land come before the 'elder' or 'peacemaker' of the village, appointed by the Church, and if they are not settled by him they usually go directly to the chief. They also come before the court of the congregation if they involve an offence against Church law (cf. Document, pp. 262–3).

Disputes between pagan women are settled in the same way as disputes between men. There is neither the leadership and authority of a senior woman of the homestead as among the Nguni and Bemba,[1] nor that of a senior age-set or women's council as among the Meru[2]. The first woman to be settled as a wife in a young men's village is, as we have seen, entitled to the deference of the wives who follow her, but she has no authority over them. In the same way, though a man's senior wife takes precedence in family rituals, and the wife of a headman may lead in a village ritual, or the wife of a chief in one made on behalf of the country, such precedence in ritual does not carry authority over other women. Certain women versed in the rituals performed at puberty, marriage, birth, and death, and knowing the proper medicines to use, are called in on these occasions, but such

[1] Monica Hunter, *Reaction to Conquest*, pp. 18, 33–41; H. Kuper, *An African Aristocracy*, pp. 38–9; A. I. Richards, *Bemba Marriage and Present Economic Conditions*, Rhodes-Livingstone Papers No. 4, pp. 67–9.

[2] E. M. Holding, 'Women's Institutions and the African Church', *International Review of Missions*, July 1942, pp. 290–300.

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abanyago have no more general authority than the doctors who divine or treat the sick. Their parallels among men are the priests (also called *abanyago*) who perform the rain ritual and the sacrifices to dead chiefs.

The one position which endows a woman with legal authority is that of father's sister. A senior sister has a joint responsibility, along with the headman of the village, for the distribution of her dead brother's property, and her brother's children may appeal to her to arbitrate if they have a dispute with their father while he is yet alive: this is particularly important in the families of chiefs, since a chief's son cannot bring his father before commoners for arbitration. The authority of a father's sister is, however, exercised only within the lineage and does not extend even to wives of lineage members. Co-wives may take a dispute for arbitration to their husband, but if, as often happens, he is thought to be prejudiced, they go to a male neighbour, or to the headman of the village, in the same way as when the dispute is with an unrelated person (*cf.* p. 140).

Only in the group of unmarried girls in a village does there appear to be the germ of control by seniors of the same sex. We traced one case in which a quarrel between two girls nearing the age of puberty was settled by the slightly older girls of the same village, who punished one who had beaten her fellow without justification, and then lied to them when they inquired into the case, by scratching her with their nails. As they reach puberty the girls, who have grown up together in one village and formed a closely knit group, become scattered among the different age-villages of their husbands and there leadership among women is not developed (*vide infra*, pp. 171–2). This does not mean, however, that women are excluded from arbitration; they can, and frequently do, bring cases on their own account, not necessarily acting through husband or father. Unlike the pagans, Christian women who have quarrelled do sometimes ask a leading woman of their congregation to arbitrate. At Rungwe the women leaders were the sister of the chief and the wife of a teacher, both personalities; and it was to them that their fellows went to relate their troubles and ask for an opinion. We traced two such cases. Very often, however, Christian women go to a man, the Christian leader of the village, as their husbands do.

The Administration has not attempted to suppress arbitration

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•627 among the Nyakyusa, though the villagers say they have been told to 'bring all cases to Court and write them in the book', and a District Officer, in fining a man 5s. for accepting a fee of 2s. for adjudicating in a case concerning marriage-cattle, commented: 'I am afraid that arbitration is a common offence.' He went on to say, however, that 'preclusion of headman and elders from hearing cases is repugnant to the native sense of justice', and pointed out that he fined the accused only because he had accepted a fee. Nevertheless the Nyakyusa maintain that individuals submit less readily than formerly to the judgement of village headmen and are anxious to bring cases to the Native Court 'that they may be paid quickly'. European officers are constantly pressing that fines or payments ordered should be handed over quickly, whereas in cases of arbitration payment is often long deferred, even though its justice has been accepted by both parties. Again and again the report of a case before a village headman ended with 'So and so was ordered to pay such and such, but he has not yet done so'. It was suggested that disputants are less ready to reach an amicable settlement, and more prone to press for their pound of flesh than formerly (*vide infra*, p. 147).

The cases settled by friends and village headmen are mainly disputes over the ownership, destruction, or sale of property; often such minor property as a bunch of bananas, a hen, a few cents, or a pot of beer. For example, a certain woman, A, took a hen belonging to her co-wife, B, while the latter was away, and cooked it for their husband. On her return B asked her husband about her hen, but he denied any knowledge of what had happened to it. B's friends, however, told her that A had cooked the hen for their husband while B was away, and B actually asked her husband where the hen he had eaten had come from. He replied that he did not know—possibly it came from A's father. So B brought her co-wife to the headman of the village, who ruled that A and the husband must each pay B a hen. The husband's fault lay in his not asking whence the hen he ate came.

Another woman was carrying a pot of beer to a smith to pay for an axe which her husband had bought. Three young men stopped her on the way and begged her to sell it to them instead, promising the regular price of 1s.; but though they drank the beer they delayed payment, and after some time she sued for it before the headman of their village. The young men admitted their debt,

1:Wilson E-5 (1934-1938)1951 FN17 Ngonde FN17
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but when the case was recorded 45 c. was still outstanding, one man having paid 30 c., another 25 c., and the third nothing.

Another dispute brought for arbitration to a male neighbour was between two women who had together brewed beer for sale. The beer went sour and they quarrelled over the division of the 1s. 10 c. they got for it; they had expended 1s. on millet with which to brew so there was only 10 c. to divide.

Cases involving property of greater value are brought in exactly the same way. For example, one man, A, accused another B, of stealing the cow-bell off one of his cows, when A's herd was grazing near B's homestead. The case was first brought before B's immediate neighbours who thought him guilty, and ordered him to produce the bell. He refused and the case went to the village headman, who also found B guilty and ordered him to pay 10s. fine. B accepted this judgement but had not yet paid the fine when the case was reported.

Very often a claim on a kinsman or an affine to hand over cattle due is also pressed before a friend or village headman, as when a young man, Y, brought his father before one of his father's most respected friends, Kasitile the rain-maker, demanding that his father somehow 'find' a cow which he owed him. The case was as follows: A, the father, had two sons, X and Y. When X's full sister married, one cow from the marriage-cattle was given to Y. When Y's full sister married one cow was duly given in return to X. Then X's sister left her husband and the marriage-cattle had to be returned, plus two for the adultery fine. Y not only lost the cow he had received for her, but A took from him also a cow for the fine. This cow Y had got as an adultery fine for his own wife. Y was therefore demanding one cow back from A, and wanted him to 'look for it among his sons-in-law'. People commenting on this case said that it was perfectly proper for Y to bring his father before a friend, but he should not take the case to Court as he was threatening to do.

Besides the many disputes over property a smaller number of accusations of assault or insulting behaviour are settled by arbitration. In one case a woman complained that her husband had beaten her unjustly. His defence was that he suspected her of adultery. A certain man who had bought a bunch of bananas from his wife had asked for a calabash ladle (for drinking), and when he asked for it they were close together. The husband saw

1:Wilson E-5 (1934-1938)1951 FN17 Ngonde FN17
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•627 them. Next morning the wife took the bananas to the purchaser. In the evening the husband went off to visit his friends so his wife 'left the hearth empty'. He came home late, and finding no food prepared, accused her of adultery and beat her. The village headman argued that had the husband really suspected adultery he would have 'caught' his wife when she was talking with the man who bought the bananas, and the husband was ordered to pay 2s. to his wife. Accepting the decision he offered her a cloth worth 2s. but she asked for cash which he had not yet found when the case was recorded.

In another case a herd-boy, X, supported by his father, accused a fellow herd-boy, Y, of insulting and beating him. Y had called X a witch and accused him of 'throttling the cattle'. X and his father took the case first to Y's father who ordered Y to pay X 1s. When Y refused, X and his father proceeded to the village headman who ordered Y to pay 2s. which he eventually did.

Accusations of practising witchcraft are also aired in village-section and village, and may be settled there without ever going to the chief. This procedure we have already described.

As is evident from the examples cited, friends and village headmen arbitrate not only in cases between neighbours, but also in those between members of different villages; the plaintiff always applying to the friends or headman of the defendant for an opinion on the case. Very often the disputants are relatives who may choose to apply to another relative to arbitrate, but who have no obligation to do so;[1] fathers and sons, husband and wife bring their disputes as readily before friends and village headmen as before relatives. There is, however, a strong feeling that they should settle by arbitration and not proceed to the chief's court. Indeed it is felt that all cases should be settled amicably by agreement before arbitrators, and not by order of the court; the obligation to reach agreement is all the greater when the disputants are relatives.

We quote a final case in some detail as it exemplifies the emphasis laid on agreement as well as illustrating procedure. The case, which we followed throughout ourselves, was one between two comparative new-comers to the village, a young man almost a boy, called Kenani, and L. a man of forty or more.

[1] cf. Godfrey Wilson, 'An Introduction to Nyakyusa Law', *Africa*, Vol. IX, 1936.

1:Wilson E-5 (1934-1938)1951 FN17 Ngonde FN17
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Kenani first came to the chief Porokoto, saying: 'Someone has burnt my maize-field.' The chief replied: 'Is the village headman not there? He takes cases; only if there are hard words does it come up to me.' So Kenani went to the village headman, Mwafula. He arrived about 4.15 p.m. and the man he accused came about 5 p.m. Mwafula sent for four or five neighbours to help him try the case. The two disputants stood up with one of the neighbours between them, as if they were at court. Kenani stated his case, L (the accused) intervening with comments.

K.: 'On Thursday last week [eight days previously] L. was burning the grass and my maize was burnt too.'

L.: 'I was burning to get fresh pasture for my cattle.'

K.: 'But I am not a stranger in this country. The cattle ought not to graze in the village; it's within the village there; sheep ought to graze there, not cattle. That part has never been fired before. I was ill when my food was burnt, but I sent my sister to say to L.: "See, you burn the grass and my maize is destroyed." But he said: "I burnt for fresh pasture only, did I deliberately kindle the rubbish in your field in order to spread the fire to it?"'

Here the arbitrators[1] expressed surprise to each other that L. should insult a man after burning his maize. They asked L.:'Did the woman, his sister, come to ask you about the matter?'

L.: 'Yes, she came, but she said [speaking in her brother's name] "You have burnt my maize and you burnt it deliberately, give me two plots (*imbaka*) of maize." To which I replied: "What! Two plots indeed! Did I kindle the rubbish on your field? I didn't know there was any maize where the fire scorched the field."'

K.: 'It is this which especially hurts me, this talk about "not kindling the rubbish in my field". If he had come to me and said, "Friend, I was burning a patch for fresh pasture, but the fire spread into your field, I am sorry, I am indeed very much to blame." Had he said this, I should not have come here. You see that L. is my senior. I should have said: "Since you, my senior, have admitted that you are at fault I am satisfied. That's all right." But when he began talking about not kindling the rubbish

[1] The same word *abalongi* is used for members of a court of arbitration, and the chief's court, and Native Court. We translate it as 'arbitrator' in the first context and 'judge' in the other two.

1:Wilson E-5 (1934-1938) 1951 FN17 Ngonde FN17
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627 in my field, I thought to myself, "He did indeed burn arrogantly and deliberately." And so I have come for a judgement.'

The arbitrators, speaking partly to one another and partly to L.: 'When somebody's crop has been burnt, who would you expect to take offence? Surely the owner of the food, not he who burnt it? It is for the latter to abase himself and say, "I am at fault". The owner of the food is naturally sore at the thought of his burnt food.'

To L. direct: 'Had you spoken to your fellow saying: "It is true, friend, I was burning for fresh pasture and the fire spread," we should have pressed Kenani to forgive you, saying: "Friend, your senior has admitted his fault, forgive him." What have you to say to this?'

L.: 'Do you mean I deny that I did the burning? I was certainly burning, for fresh pasture. If you say, "Pay!" I will pay for the land I burned, but for the maize I will not pay. How should I know its whereabouts?'

Arbitrators: 'For the land you don't pay, it is not his, and it's not yours. There is an owner from whom we always seek land. And you are both new-comers. But you have burned somebody's crop.'

L.: 'I was burning to get fresh pasture for cattle. I did not burn crops.'

K.: 'But cattle should not graze there. It's part of the village.'

Mwafula: 'It is certainly part of the village—I went to see.'

Here the discussion was interrupted by one of the arbitrators, Jacobu, who protested that this was a breach of procedure. Mwafula should not have gone beforehand with only one of the disputants to see about a disputed point, but two arbitrators should have risen now and gone with the disputants to see. He shouted a lot; and so did Mwafula, who explained that when the chief had told Kenani to lay the case before him, he had ordered him to go with Kenani to see the burnt maize. At last they calmed down and Jacobu was rebuked by one of the other judges who said in a quiet voice: 'Perhaps you have been drinking beer —or haven't you?' After this they continued the case, but as it was getting late and both Kenani and L. showed signs of rising temper and began shouting again, the case was deferred to the next morning.

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During the proceedings Mwafula was referred to by all parties as 'father', and he addressed the parties singly by name and collectively as 'countrymen' (*mwe ba kisu*). Sometimes the procedure was formal, sometimes not. Sometimes one of the arbitrators addressed the man standing between the disputants who repeated the question to them, and they conveyed the answer in the same way; but sometimes this procedure was omitted and conversation, with even two or three speaking and shouting at once, took its place. There were many repetitions which we have omitted, and the whole case was recapitulated at one point for the benefit of a late-comer.

When the case was resumed the next morning Nsajigwa, a next-door neighbour of Mwafula who had not attended the first sitting, was present, and the case was explained to him. L. was less aggressive than previously and agreed to pay 'for burning for fresh pasturage', in the same words as before, but he did not press the point that he thereby implicitly renounced responsibility for the maize, though he clearly did so. The arbitrators attempted again to get him to make some apology to K. and so have the whole thing settled amicably, but this he would not do.

K.: 'Had L. said, "I am sorry it spread from the pasturage", I should not have come here; but since he only admits to burning rubbish in my field, and offers to pay for the land, refusing to pay anything for the crop, I say he does not care at all that he has destroyed someone's food. He thinks, "The maize was small and the owner is small; the maize was not full grown and the owner is not full grown either." But just as even a hen has a house to enter (for refuge) so I have a shelter, the Law (*ubulongi*), which is a refuge for us all.' Kenani then went on to relate how L. had beaten him with a stick and had had to pay a fine of 7s. for it; and that this was why L. still hated him. But Jacobu told him not to bring up a case already settled.

All the arbitrators were agreed that L. was in the wrong. Some wished to 'cut the case' and name a fine, but Nsajigwa, before they had well begun to discuss the amount, said: 'Since it has come to fining and they do not agree, let the case go up to the chief, we cannot finish it.' He spoke with authority, and the sitting broke up.

Lingering behind we asked Mwafula why they did not give a

1: Wilson E-5 (1934-1938) 1951 FN17 Ngonde FN17
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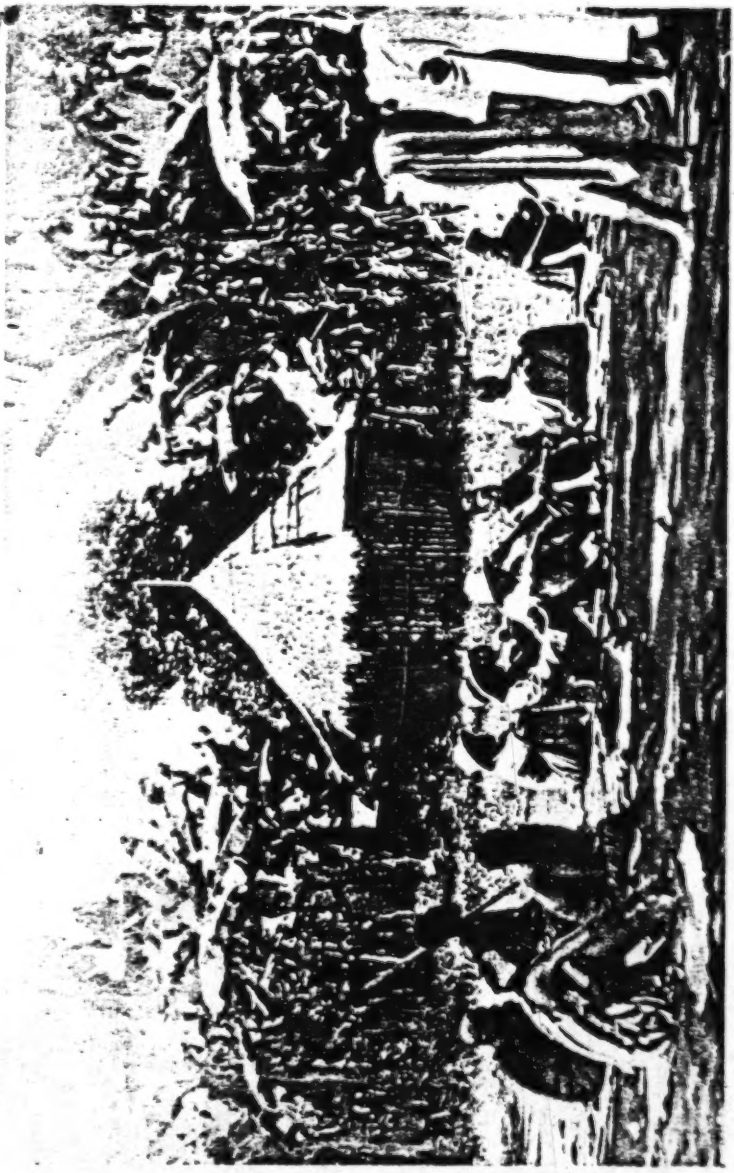

XV. SETTLEMENT OF A DISPUTE

The anthropologist (Godfrey Wilson) is sitting with the court. On his right is the chief Mwaihojo, on his left Kasitile the rain-maker. Behind him (in a topee) is Mwaisumo the clerk, and Mwakionde, famous as a doctor and maker of lions. In the background is a half-built hut

[facing p. 146]

1:Wilson E-5 (1934-1938) 1951 FN17 Ngonde FN17
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627 judgement. He replied: 'Because in the villages we only arbitrate, we do not compel people to submit to a decision. If hard words are spoken and the disputants do not agree, then we take the case to the chief. But (turning to another man) we were wrong not to decide on a fine, we ought to have named so many shillings. Then if L. had refused to pay it we should have taken the case to the chief.'

When we arrived at the chief's place he at once sent off two men with the two disputants to count the burnt maize stalks. They found eighty-seven stalks burnt irretrievably and sixty-eight scorched but recovering.

Chief to K., through Mwafula, who acted as spokesman: 'What have you to say? The maize is really burnt.'

K.: 'I say he must pay. Had he expressed regret I should not have come here, but even at Mwafula's he did not apologize, he said: "I will pay for the land, but the maize has not been burnt, I will not pay for that." Though the arbitrators, Mwafula and the others, pressed him to admit his liability, saying: "The fire spread from the pasture", he would not admit it. And even when we went there with witnesses to see the maize he called to some young men, "If the mother or sister of Kenani comes to fetch firewood here tell them I shall imprison them, I have bought this land. I have paid Kenani." (Laughter in court.) And he said to some women who were gathering firewood near by: "Why do you gather firewood on my land?" (More laughter.) It seems that he does not regret at all that my food is burnt. Had we two been alone when he was questioned he would have speared me. He has long sought to injure me and now he is destroying my food. Therefore I have to run to the Law to escape from him.'

Timothy Mwanjesi, who had not heard the case, now arrived and started speaking, saying: 'It always happens when a man has fired the pasture and burnt another's field that he goes to his fellow and says: "Friend, it has spread . . ." and nothing more is done about it.' The judges explained the case to him; after which K. continued: 'If you say he should not pay, then I wish to have a letter to show the European Administration, saying, "L. has burnt the food of K., and has not paid", so that if I should burn your food, Timothy, and you say "Pay", I shall refuse, supported by this letter which proves there is no payment for such things.'

1: Wilson E-5 (1934-1938) 1951 FN17 Ngonde FN17
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627 One of the other judges: 'How does he seek to injure you?'

K.: 'No, that is another matter, we are only concerned with the case of the maize.'

Porokoto: 'Answer the judge's questions. Tell him.'

K. explained that his sister had run off with a man and that the lovers had hidden in L.'s home. The court messengers searched for them for many days but could not find them, and K. joined in the search, for his sister's husband was pressing him to return the cattle given for her. At last one day K. and a friend called at L.'s home, not searching, just calling, and were startled to find his sister's seducer. The latter seized a stick and fought K, who fled to the chief. The chief sent messengers to fetch the wanted man and L., in whose house he was hiding. They were some time in coming, so the chief sent K. to the top of the hill to bid them hurry up. He did so, and L., coming up first, said: 'Were you calling me?' 'No', said K., 'I was calling the messenger', but L., being an older man, felt insulted, thinking he had been shouted for by a boy, and took a stick and beat K. savagely. He was summoned for this and fined 7s.

Porokoto: 'Oh, it is this you mean when you say he sought to injure you, and now he seeks to destroy your food?'

K.: 'Yes.'

Porokoto: 'You, L., have done wrong in one thing; you insulted K. by saying "Did I kindle the the rubbish on your field?" As it is a fining matter, come to the Court on Monday."

Men at the chief's place, commenting on this case, said it should have been settled amicably. 'The country has decayed, we have turned ourselves into bees instead of men. European times (*ikisungu*) have come, constantly we pay one another. People fear to come and build with us, saying: "See, there they pay, I have cattle, and children" (implying, I am a prosperous man and do not wish to grow poor by going there).'

We asked Porokoto how the case would have been settled in the old days. He replied: 'In the old days L. would have given K. seed to plant again; but a new way has come now, we have discarded our own way; now we pay shillings. When millet was burned in the past they paid a bull, because a basket of millet was sold for a bull.' Turning to an old man, Mwambege, who was there, he asked: 'Was it not so, Mwambege?' 'Yes—perhaps an iron hoe was paid. When I came here from Lugulu country I burnt

1:Wilson E-5 (1934-1938) 1951 FN17 Ngonde FN17
Nyakyusa

627 some pasturage and the fire destroyed two plots of millet. I gave the owner an iron hoe.'

627 692 The ideal is settlement by agreement; in practice (at the present time) a large number of cases go (like this one) to the chief, and then on to the Native Court. Thence there are many appeals to the Native Appeal Court, the District and Provincial Officers' Courts, and even to the High Court of Tanganyika. As we have indicated, it is likely that fewer cases are settled by arbitration than formerly; but before the coming of the Europeans, chiefs' courts with power to enforce judgement existed, and were used. There was no 'golden age' in which all cases were settled by agreement.

627 208 The decision of arbitrators is essentially the judgement of public opinion in the village, or the respective villages, of the disputants. Cases are heard in public, neighbours drop in and join in the discussion, and a decision cannot be given contrary to their expressed opinions.

b. Witness to contracts

675 Not only do fellow villagers play a part in settling disputes, they also act as official witnesses in various types of legal transaction. The village headman is an essential witness at an autopsy (*vide supra*, p. 116) and at the distribution of the estate of one of his men. Whenever marriage-cattle are handed over, two or more non-relatives are called upon to serve as witnesses,[1] and those chosen are commonly village neighbours of either the groom or his father-in-law. We heard one man censured by his friends because he had neglected to take a village neighbour with him as witness when he went to summon his son-in-law to his daughter's puberty ritual. He had visited his son-in-law's 'best man' (*umfusya*) as was correct, but had omitted to take a friend with him to witness the conversation that took place. Even in matters that are kept very secret at least one official witness may be summoned. For example, an old man occasionally gives his heir permission to sleep with his wives while he is yet alive, and he does so in the presence of a neighbour or senior relative, for though the affair is very private it is absolutely necessary to have a witness to prove that the right was granted.

[1] cf. Godfrey Wilson, 'An Introduction to Nyakyusa Law', *Africa*, Vol. X (1937).

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8. MISFORTUNES ATTRIBUTED TO MYSTICAL CAUSES[1]

Information from numerous informants

(a) *Witchcraft*

Total number of cases 92

No.	Category of supposed victim	Category of accused	Category of accuser	Spatial relationship of victim and accused	Charge	Grounds of suspicion	Investigation	Upshot of case	Structural relationship of accuser and accused
1	Village cows	Married woman (Mother of Mwaisumo)	Neighbour, a very poor man and a stranger to the village	Same village	She bewitched village cows	Cows went dry	*Mwafi* ordeal (drunk by her son Mwaisumo who vomited)	Accuser had nothing to pay as fine, so beaten	Village neighbours
2	Boy	'Village father' (Mwantibe)	Parents of victim	Parents of victim and accused in same village. Boy in attached boys' village	'Eaten' son of village neighbour	Accused sent boy on a message. Boy refused to go. Accused threatened boy who died shortly afterwards	?	?	Village neighbours
3	Man	Village neighbour (Moses)	Victim	Same village	Bewitching his neighbour	Dream of victim	None. Dream related to neighbours who asked accused to move	Accused moved to another village of same chiefdom	Village neighbours
4	Man	Village neighbour, a doctor	Village neighbours	Same village	Caused neighbour to fall ill	Doctor threatened victim after a quarrel, saying: 'You may sleep'. Victim fell ill. Recovered when treated by doctor who had threatened him	None	Doctor forced by neighbours to treat man he threatened, then driven out of village	Village neighbours
5	Men and cattle	Village neighbour, Kagenya	Village neighbours	Same village	'Ate' people. Bewitched cattle	Death of men. Reduction of milk supply.	Autopsy on victims	Accused driven out and his food seized. He returned to his home village	Village neighbours

[1] Misfortunes attributed to the ancestors are not included in this table.

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1:Wilson E-5 (1934-1938) 1951 FN17 Ngonde FN17
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1: Wilson E-5 (1934-1938)1951 FN17 Ngonde FN17
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MISFORTUNES ATTRIBUTED TO MYSTICAL CAUSES—contd.

(c) *Witchcraft—contd.*

No.	Category of supposed victim	Category of accused	Category of accuser	Spatial relationship of victim and accused	Charge	Grounds of suspicion	Investigation	Upshot of case	Structural relationship of accuser and accused
6	Young man	Village neighbour, Kagweya's son	Victims	Same village	Prevented road on which they were working being completed quickly			Accused driven out	Village neighbours
7	Village cows	Man of the village	Village neighbours (public accusation made)	Same village	Bewitched cows	Decline in milk supply	*Mwafi* ordeal. Accused did not vomit	Accused driven out	Village neighbours
8	Child	Man, neighbour of victim's father	Father of deceased	Same village	Killed child by witchcraft	Death of child. Accused did not attempt to persuade father of victim to remain, when he was packing to go after victim's death.	Autopsy on victim. *Mwafi* ordeal. Accused did not vomit	Accused driven out. Chief seized his cattle	Village neighbours
9	Child of visitor	Host	Village neighbours	Same homestead	Made child ill	Child very ill with ear-ache. Host angry because visitor feasted neighbours. Child worse after such a feast. Host did not express good wishes for recovery (cf. p. 110 ff).	Discussion before assistant headman and village headman	Accused driven out of village	Village neighbours
10	Child	Man, neighbours of victim's father	Victim's father	Same village	Killed child by witchcraft	Father of victim wanted an unreasonable amount of land. Given one field when he joined the village. Wanted another which was refused him by the villagers	None known		Village neighbours

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MISFORTUNES ATTRIBUTED TO MYSTICAL CAUSES—contd.

(a) Witchcraft—contd.

No.	Category of supposed victim	Category of accused	Category of accuser	Special relationship of victim and accused	Charge	Grounds of suspicion	Investigation	Upshot of case	Structural relationship of accuser and accused
11	Man	3 neighbours (male)	Victim (before his death)	Same village	Spurned victim (normally (by witchcraft))	Illness and death of victim. He denounced before his death that 3 neighbours (whom he recognized) had spurned him	Accusers. Doctrinal 'wounds' found	No case made. Agreed by village that 'friends' he now were re-appointed, but their names were not made public	Village neighbours
12	(a) Cross (b) Child	Neighbour of child's father	Victim's father	Same village	Bewitched cross killed child	Death of child. Accused boasted of his witchcraft	?	Accused driven out	Village neighbours
13	Two men	Neighbour (a man, Kimbilu)	Victims	Same village	'He had destroyed their potency' by witchcraft	?	?	?	Village neighbours
14	?	Christian elder	Pagan fellow villagers	Same village	?	'Proud'. 'Does not look at people when he greets them.' Built a very big house in a pagan village	?	?	Village neighbours
15	X Lakeshore on the Lupa gold-fields	Fellow labourer (a Christian) William	Victim	Same camp	Had injured X's eyes by witchcraft	X had eye trouble. William was seen in a dream by a third labourer. William had recently found gold	Meeting of all the workers	William driven away from the camp	Fellow employees

1:WILLIAMS-E-S/19334-19181951 FN17 Nigeria FN17
Nigeria

DISPUTANCES ATTRIBUTED TO MYSTICAL CAUSES—contd.

(c) Witchcraft—contd.

No.	Category of supposed victim	Category of accused	Category of witness	Racial relationship of victim and accused	Charge	Grounds of suspicion	Investigation	Upshot of case	Occupational relationship of accused to accused
16	Young man, labourer in Lagos gold fields	Fellow labourers		Same camp	"They destroyed my life, body or kind of witchcraft"	Alleged that he ate okro mixed by means of which result. Illness while at work and finally death after returning home	Discharged (Police)		Fellow employees
17	Clerk A	Fellows in work camp, especially fellow clerk B	His friends	Same camp	A made B by mutilating form of which result	A had explained B as interpreter and a rival position. A was generally when eating with his fellows. Illness began when he choked over a piece of food. He was eating with his fellows	None		Fellow employees
18	Labourer on Lagos gold fields	Fellow labourers	European employer (Mr)	Same camp	Fellow workers had 'eaten' him	Sudden death of labourer. He was lucky in finding gold and his employer's favourite	None	Fellows agreed that evil to them had been caused by witchcraft and [illegible]	Fellow employees
19	Labourer on Lagos gold fields	Fellow labourers	-	Same camp	Fellow workers worshipful him	Died, according after he had received little to prison money from his employers (cf. pp. 200–201)	-	-	Fellow employees

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1:Wilson E-5(1934-1938)1951 FN17 Ngoondo FN17
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(d) *Witchcraft—contd.*

MISFORTUNES ATTRIBUTED TO MYSTICAL CAUSES—*contd.*

No.	Category of supposed victim	Category of accused	Category of accuser	Special relationship of victim and accused	Charge	Grounds of suspicion	Investigation	Upshot of case	Structural relationship of accuser and accused
20	Headboy of European employer on Lupa gold-fields	Fellow employees, individuals not named, but rank hated as	Victim	Same camp	'People' had bewitched him	Acute illness of victim after dropping with remainder of his European employer. This woman was given in charge of the rank when the European visited other Europeans, but she and the headboy were lovers. Victim and rank hated her number on account of this woman. Victim hated by his fellow employees because he was headboy and looked after everything during his employer's absence	A doctor gave victim medicine which would enable him to see the witches in dreams. He saw two men who hated him, and one employer's associates carrying a knife	Slow recovery of victim. He said the dreams to be true	Fellow employee
21	Nyakyusa employer of 11 men on Lupa gold-fields	Employees	Victim	Same camp	Employees had 'spread him' (with witchcraft)	Acute stomach pain. Ill-nature. 'He had been angry with his men.'	Divination	Victim recovered	Employer/employee
22	Village headman working as a labourer on Lupa gold-fields	Fellow labourers	?	Same camp	Fellow labourers killed him by witchcraft, because he darkened their eyes so that they should not find gold. He himself was a witch.	Sudden death of headman a week after he began work. Gold was scarce and he alone had found some, running 10s. grains country	?		Fellow employee

1: Wilson E-S (1934-1938) 1951 FN17 Ngonde FN17
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(a) Witchcraft—contd.

MISFORTUNES ATTRIBUTED TO MYSTICAL CAUSES—contd.

No.	Category of supposed victim	Category of accused	Category of accuser	Social relationship of victim and accused	Charge	Grounds of suspicion	Investigation	Upshot of case	Structural relationship of accuser and accused
23	Husband	2 wives (not favourite)	Victim	Same homestead	Wives accompanied the witches to 'eat' him. Opened the door for them. One herself was a witch	Illness of husband. Wives jealous of chief wife who was the favourite	Divination	Treatment with medicine. Divorce impossible because one suspect a sister of the favourite wife	Spouses
24	Husband	Wife	?	Same homestead	Caused illness to husband	'He hated her and he left ill.'	Divination		Spouses
25	Husband	Wife	?	Same homestead	'Eaten' husband	Death of husband	?		Spouses
26	Co-wives	Wife (Kajenga)	Husband (first)	Same homestead	'Bewitched him of co-wives'	Husband did not sleep well with other wives	?	Divorced for witchcraft	Spouses
27	?	Wife (Kajenga)	Husband (second)	Same homestead	?	?	?	Divorced for witchcraft	Spouses
28	Husband's sons	Wife	Husband	Same homestead	Bewitched husband's sons	Cows gave little milk when wife at home, much when wife away	Mfumbi ordeal. Wife vomited	Husband paid a cow and a bull to her in turn	Spouses
29	Adulterer	Husband of woman adulted				Adulterer began to squint after had run off with the woman			Husband/ wife's lover

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(a) Witchcraft—contd.

MISFORTUNES ATTRIBUTED TO MYSTICAL CAUSES—contd.

No.	Category of supposed victim	Category of accused	Category of accuser	Special relationship of victim and accused	Charge	Grounds of suspicion	Investigation	Upshot of case	Structural relationship of accuser and accused
30	Adulterer	Husband of woman seduced (no. 29)				Adulterer was very ill with a poisoned hand. Husband of his lover had been previously accused	Divination		Husband/wife's lover
31	Senior half-brother (different mother)	Junior half-brother	Victim	?			*Mwafi* ordeal. Junior brother acquitted	Junior brother judged innocent	Half-brothers
32	Father (junior and female)	Middle son (Mwalyale)	Brothers (half?)	?	Killed father	Death of father	*Mwafi* ordeal	Accused driven out of chiefdom. He became rich and brothers later made friends with him. They said '*Mwafi* had been mistaken'	Brothers (half?)
33	Child	Father of child as assistant headman	Village headman	Same homestead	Made child ill	Child ill. Father did not report illness to village headman	?	Accused driven out of village	Village headman/assistant headman
34	Chief's child	Village headman (Mwamba)	People of the chiefdom	Same chiefdom	Caused child to have sore eyes	Mwamba had gone to the chief alone and said 'witches are eating the child'. He would have gone with other village headmen, had he been invited	*Mwafi* ordeal	Chief took Mwamba's 4 cows. He was driven out for one year	People of chiefdom and village headmen

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MISFORTUNES ATTRIBUTED TO MYSTICAL CAUSES—contd.

(a) *Witchcraft—contd.*

No.	Category of supposed victim	Category of accused	Category of accuser	Spatial relationship of victim and accused	Charge	Grounds of suspicion	Investigation	Upshot of case	Structural relationship of accuser and accused
35	Chief	'People of the north'	?	Same chiefdom?		Chief sick	?	Said that chief and his fellows fought and defeated the attackers in dreams	Chief/People
36	Chief?	Rich man owning 30 head of cattle (Mwaisumo)	Chief	Same chiefdom		Chief 'did not sleep'	*Mwafi* ordeal. Mwaisumo did not vomit	Chief seized all Mwaisumo's cattle. Neighbours seized his crops. He moved with his wives to another country	Chief/rich commoner
37	Anthropologist	A man who had been refused la. when he asked for it as a present	Servants and friends of victim. (Nyakyusa)	Same neighbourhood	Caused attack of malaria (by witchcraft)	Attack of malaria day following refusal of present. Accused did not come to inquire for victim as others did.	None	None	European/African
38	Anthropologist	'The witches' individual not specified	Servants and friends of victim. (Nyakyusa)	Same village	Prevented normal recovery from malaria	Prolonged attacks of malaria, not cured by ordinary treatment. 'It was not just malaria—see you drank much medicine for malaria, but still did not recover.'	None	Formal welcome by wife of chief who lived in village on anthropologist's return, and *apology* for the illness	European/African

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(*e*) *Vengeance Magic* (Ulupembe—*the Horn*) MISFORTUNES ATTRIBUTED TO MYSTICAL CAUSES—contd.

No.	Category of Victim	Category of accused	Category of accuser	Spatial relationship of victim and accuser	Charge	Grounds of suspicion	Investigation	Upshot of case
1	2 brothers M^1 and M^2	A doctor (Makikoje)			Accused used the horn. Did not tell M^1 that he was doing so	Accused said M^1 had stolen his millet. M^1 and M^2 both died	Autopsy revealed death due to 'the horn'	Chief drove accused out of country for not bringing case to court but revenging himself. The doctor had used the horn in his own case
2	1. Seducer of woman 2. Child of seducer's elder brother	Husband of woman seduced (Mwakikulu)	Relatives of deceased seducer		Accused used the horn. Relatives of victims spoke of deaths as due to sorcery (*Ubutege*)	Victim 1 had eloped with accused's wife. Accused boasted that he had revenged himself. Both victims 1 and 2 died suddenly		Woman returned to husband lest others of the family should die
3	Child of A and children of other wives of A's husband	Co-wife B.	A, mother of victim	Same homestead	B used the horn	A had stolen B's bananas and not admitted it when case was taken first to husband and then to chief. B was dissatisfied. The death of child A and children of other wives followed		A paid B for theft. A and other wives went to horn-doctor and drank medicine. They recovered
4	Man C, and woman X with whom he had eloped	Man A who inherited the woman X	Man B, brother of deceased C	Different chiefdoms.	A used the horn	C ran off with X, widow of A's elder brother whom A had inherited. C and X both died. A boasted: 'I killed them with the horn'		B speared A and fled to a distant chiefdom (before Europeans came)

No.	Category of victim	Category of accused	Category of accuser	Spatial relationship of victim and accuser	Charge	Grounds of suspicion	Investigation	Upshot of case
5	9 of A's children	B, son-in-law of A	A, father of victims		B used the horn	A's daughter left B. A returned only 2 head of cattle to B. Owed him 10 to 13 cattle. Told him to collect balance from his daughter's second husband. B summoned A to come before horn doctor. A refused. Told B to sue in court. Within 3 years children of A died		A speared B. He was convicted in District Officer's court of manslaughter
6	Gwatabile, his wife, and his full sister's husband	Man (Itupa)	Family of deceased debtor, Gwatabile		Itupa kindled the horn	Gwatabile had a cow belonging to Itupa. The relationship not known. The three victims died		Family paid a cow to Itupa
7	C	Doctor	C ?			A ran off with B's wife. B followed her and found her in C's house. B claimed damages from A, but A objected saying: 'No, she was found with C'. The court gave judgement against A, and he paid damages to B, then subsequently the court gave judgement for A in his case against C, ordering him to return to A the cows A had paid to B. C delayed, so A went to a doctor and got him to make medicine against C. C handed over the cows to A immediately and paid doctor 6s. to counteract his medicine.	Case brought before D.O.	Doctor discharged. Doubt whether or not doctor should be expelled from the chiefdom in which he lived. Opinion of the Nyakyusa divided on this point

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24. PROCEDURE IN A WITCHCRAFT CASE (TRADITIONAL)

Mwakionde (*doctor, brother of a chief*).

'The custom was that if a man was accused of witchcraft he always went to the chief and said: "They have accused me of witchcraft. Please give me witnesses." The chief would send off the man with his accuser and with witnesses to the doctor. If the accuser was proved wrong he had to pay four or five cows, or if he had no cows, a girl, and then after she had borne a child the accused would come to pay cows and be a relative in the end.

'If the ordeal (*umwafi*) convicted both, neither vomiting, the chief would be angry and say: "You are both witches." Then each would pay four cows to the chief who would kill two from each of the four for his men to eat, and both men would move from the country. If both vomited the chief would say: "You are fools; be friendly," and the village headmen would say: "Yes, but the accuser must pay cows to the accused for accusing him."

'Men never went to drink the ordeal without first going to the chief.

'Sometimes the one convicted as a witch was speared and all his cows taken by the chief—none went to the accuser. If the accuser was caught and the accused vomited, four cows went to the accused, and the others to the chief because the accuser was himself a witch. Some who were great witches died of the ordeal.'

Mwaisumo (*clerk*).

'There was a nasty little chap (*kaliko akandu kamo*[1]) who came from the hills to live at Bijilila, and who built next door to father. This chap was very poor; mother and the other villagers always gave him food. I remember the chap very well—he was very dirty in his person.

'Well, once there was complaint (*ukwijaja*) because the milk supply in the village was small. So this chap fortified himself within and said: "Do not go on complaining, sons of Kihabia, I have seen the witch who is throttling the cows. It is Kimpunga! Catch her, and let her drink *umwafi*." Mother was astounded at being taken; she was dumbfounded at being "caught" for witchcraft, for in her lineage no one had ever been caught. So then she also said: "Indeed, my husbands,

[1] Mwaisumo speaks of him as a thing rather than a person.

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take me to the ordeal, and let me drink (*umwafi*)." Mwankaje, my older brother next to me in age, went to drink the *umwafi*. He vomited immediately after he had drunk it. So that nasty little chap, Mwasulama, was defeated. He escaped paying a fine for he was so poor—they beat him a little with sticks. Had he been rich he would have paid mother a cow, for it was customary for one who had been accused of witchcraft but had vomited the *umwafi* to claim compensation for slander in court, and to be paid a cow.

'Long ago when I was a child, when the AbaMpulo were young men, the homestead they built was very rich. Ngemela and Mwasalutaba, and Mwakinene, and Kyula, and Swita, and all the others built there. Swita was a witchfinder. He had power (*amanga*) to catch witches when they throttled the cows. He always went out to the pasture when he knew that there were people who wished to throttle the cows. On one occasion the cows in the village did not give milk. Everyone was called together to complain (*ukwijaja*), and Swita (Mwaitulo), the man who caught the throttlers of cows, was among them. When they were speaking he, Swita, fortified himself with medicines within and said: "Why are you complaining all of you? I, I have seen him who throttles the cows. Let us all come together again here to-morrow, and no one must stay behind." So they all met together there. . . . Formerly it was the custom to call out names. They met together and one man who shouted the names stood a little distance off and the witchfinder who responded stood a little distance off, separately. The first man shouted the names and the witchfinder responded, saying: "Yes!" All the names were called out, but when they came to the name of Mwasalutaba the witchfinder was silent; the name was repeated and he was still silent; the third time the whole company groaned together. Mwasalutaba then said: "Friends, I am astonished, I am not a witch, I do not throttle the cows, so I ask for the ordeal." So the witchfinder said: "Yes indeed, drink *umwafi*, and if it does not convict you then I will pay a cow." So they went with him and told everything to a certain doctor who had built in the country of Mwambebule, in the hills. When they got to the doctor's Mwasalutaba drank the *umwafi*. They addressed it, saying: "We think that our fellow throttles cows, but if we are wrong tell us, you medicine." While they were yet speaking the sun went down, so they said: "The *umwafi* has caught our fellow." They returned home, and they drove him away. His cattle escaped capture though it was the custom when someone was convicted of witchcraft for the chief to take his cattle, and if he chose, to kill for those of that village who were innocent to eat meat. But Mwasalutaba escaped—they only drove him out, for the village was not really his own village,

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he came from another side. And he has never moved back to the village, nor has he ever been accused again of witchcraft.

'Swita really knows how to catch those who throttle cows for witchcraft. Here is another tale about it: One of the fellows of the AbaMpulo had begotten a child, and the child died. When they had done the autopsy "the owner of the child" said: "They (the witches) have eaten him", and he prepared to move. Then Swita began to speak in secret saying that the so and so's had killed the child. And they of whom he spoke did not come to persuade their fellow, who was preparing to move, to remain. When the chief heard that a man was preparing to move, and his fellows the so and so's did not come to persuade him to stay he called together the whole village, and was very angry with them. When he found that they all agreed he went to Ngemela (the village headman?) and said: "I think that it is they of whom Swita spoke who have killed the child, their cattle will be taken." Ngemela objected very much to taking their cattle, and the chief went to Ngemela's junior saying the same thing, that it was they (of whom Swita spoke) who had killed the child and he, the chief, would take their cattle. But Ngemela's junior also objected and reported to his senior Ngemela, who agreed that he did not wish to take anyone's cattle. The chief agreed, saying: "All right, I shall not take their cattle." But they, in their foolishness, when they heard that the chief had said that it was they who had killed the child of their fellow, and that he would take their cattle, themselves started the matter saying: "We want the ordeal." Their request was agreed to; they were given *umwafi* to drink, and addressed. But they were killing themselves. When they drank the *umwafi* convicted them; they did not vomit. When this happened and chief said: "See! It is as I thought, it is indeed they who killed the child." And he took their cattle and killed some, and people ate the meat. One cow which he took on account of this case is still there, I know it myself, we call it "Lyakakata". Formerly when people were convicted of witchcraft their goods were taken, or they were driven from the village. This tale was told me by a man belonging to the country in which it happened.'

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25. THE ORDEAL (*UMWAFI*)

Mwaisumo (*clerk*).

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'I was once given *umwafi*. It was long ago but I remember it very well. It was at the funeral of my mother's younger brother my *umwipasa unnandi*; he died suddenly, and when he was dead some people of the family said that the disease was from my father's side (i.e. from my father's younger brother, *tata unnandi*, my own father was dead at this time); and others said, no, it was from the side of the deceased's new wife—this was his third wife, recently married—he had run away with her from her husband. Those concerned were the deceased's sisters (and their husbands), brothers, wives, and fellow villagers. They said: "Let us drink *umwafi*." So they took two children, I and another, a girl—she was a daughter of the dead man and represented his own house; if she did not vomit then the disease came from within the house (i.e. from one of the wives); I, in the same way, represented my father's house.

'The doctor took some banana leaves and prepared medicine, putting some into each leaf; after a little while they called us and told us to stand apart, a bit away from the house. First the doctor gave the *umwafi* to the girl from her leaf, and then to me from mine. The leaves are kept separate and there are several for each person. All the family drew closer and sat around us. The doctor addressed each of us in turn. I do not remember the words exactly, but it was something like this: "If it was you that has brought sickness, let us see. We are sure it was you that brought the disease." Then we both vomited, she a little before me. If one does not vomit it may be very serious; the poison stays in you and you may die. Then they said: "Well, we do not know where the disease came from." Then they gave us water to wash in and some meat to eat—food is specially put aside for those that drink *umwafi*. This was the end.

'Afterwards it was said that it was the man who was the woman's first husband who had poisoned my mother's brother. We were being tested for sorcery, not witchcraft, as the autopsy had shown that it was a case of sorcery. Having heard this, we did not spread the news; we kept quiet, waited, and watched. And then after a week the dead man's son, my cousin (*untani*), was dead; and that woman ran away. She was frightened. Then we knew it was her former husband who had killed both by sorcery.[1] The family sought the doctor to get

[1] In another text (quoted on p. 256) Mwaisumo explained that the injured husband had used 'the horn', i.e. vengeance magic. Being of the family which suffered Mwaisumo calls it 'sorcery'.

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the medicine for the prevention of the disease, and then it was finished. The wife was taken back by the first husband, so the disease could not kill us any more.

'When she went back to him he could not come to us again. (True, he had no reason to do so.) Nothing happened to him. It is not our custom to accuse such people to the chief; we do not exactly know if it is the man, and still we have taken his wife. We were all concerned in this because of my mother. It happened four years before my brother died; there were four years between my uncle's death and his. I was in Tukuyu during the influenza after the war—in 1918—and then I went to Selya the next year, 1919, and my uncle died.

'The procedure is similar in an accusation of witchcraft.'

Mwaikambo (clerk).

'*Ummafi* is always used when someone denies practising witchcraft or theft, or denies that he is a liar. When they[1] have "caught" their fellow in the village and say that it is he who is throttling their cows so that they do not get milk, and the accused man denies it, then they take him to drink *ummafi*. When they have come to the doctor's place they tell him their tale. Two men support the accused and two the accuser. They do not eat when they are going to drink *ummafi*. The doctor first says to the accused: "If you are really guilty of throttling the cows, don't trouble the *ummafi*, but confess." And he replies: "Had I been seen as a witch I would not have come here." And both his supporters say: "Our friend is falsely accused; he has never practised witchcraft."

'The doctor questions the accuser in the same way, saying: "Did you really see your fellow as a witch?" and he and his supporters reply that they saw him.

'So then the doctor gives them *ummafi* to drink. He sprinkles a little powder in tepid water; or sometimes (so they say) he sprinkles the *ummafi* on two freshly cut stumps of banana stem, one representing one side, and one the other. Then the stump in which the "new growth" (? sap: *ulufyugo*) first appears is the one that has "vomited". The "growth" appears the same day that they cut it. The doctor addresses the *ummafi* (*ikupangililaga*) and the others present assist, the supporters of each man addressing him. Then one vomits and those on his side trill, but he who has not vomited is very sad. Then they go home and he who has vomited pays the doctor.

'There is very little drinking of *ummafi* nowadays, but much divination (*ubulagusi*).

[1] I.e. 'the defenders'. Mwaikambo explained, 'A witchcraft accusation always begins with "the defenders" seeing the witches in dreams.'

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754 627 695 'There are some in our country who were caught for witchcraft, for "eating" people and throttling cows. The name of one of them was Sumali, but now he is dead; another is Mwaimama. They denied the accusation very strongly; they were brought before the chief (my father) for their case to be judged, and when he had given judgement they said they wished to go to *umuaſi*. So they went to the *umuaſi*, and when they had drunk it Sumali vomited and Mwaimama was conquered. Nothing happened to him—he was not driven out, they just told him to stop doing such things—but continually, even now, he is accused of witchcraft whenever anything happens. He's not gone to *umuaſi* again.

'This happened before I went to school, when I was still herding cows, about 1925 or 1926. I did not see the trial (before the chief) with my own eyes, but I was there when the *umuaſi* was administered.

'On another occasion a woman was "caught" for witchcraft when her child died. When they do an autopsy they sometimes find wounds on the right side or on the left. The right side is the side of the man, the left that of the woman. This time they found them on the side of the woman. The woman (*i.e.* the mother) denied that it was she who had "eaten" the child so they went to *umuaſi* and the woman was "conquered" (*i.e.* proved to be lying). It was not she, in her own person, but a member of her lineage who had "eaten" the child. After the *umuaſi* had "spoken" they went to a diviner to discover exactly who the individual was. [163]

'I heard about this from others, but Mwasintobile, the father of the child who died, is a man of our country—I know him.'

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27. WIVES DRIVEN AWAY FOR WITCHCRAFT

Mabuulaleja (elderly commoner).

'Many wives are driven away for witchcraft. They are driven away by their husbands. If a man has several wives one may be bad and throttle her husband's cattle, or throttle her husband himself. Then the man goes and complains (*akwijaja*), saying: "They have destroyed my cattle", or perhaps, "My neighbours have 'eaten' me", whichever it is. When his fellows hear his complaints they say: "Do not accuse outsiders. See! It's your wife." Some women are bad and the husband does not sleep when he is with his other wives; only when he is with her (the witch) does he have a good sleep. She spoils the fertility of her co-wives. Or sometimes all the wives are friendly and agree to spoil the cattle of their husband. 754 627 ●

'There is a woman named Kajonga whose husband drove her away for witchcraft because she bewitched the fertility of her co-wives. A long time after her divorce she was married to another man, Mwimba by name. From that man also she was driven away for witchcraft, but what wrong she had done was not much known. Some time later she died. 754 627 587

'Women who are driven away for witchcraft always remarry; they do not run off with men.'

Njakakosa.

'When a wife was accused she drank *umwafi*. If she was "caught" by the ordeal sometimes her husband drove her away, sometimes he did not. Usually he did not.'

Nnasa.

'Formerly wives were frequently driven away for witchcraft. Such a wife remarried quickly.'

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31. PROCEDURE IN WITCHCRAFT CASES (MODERN)

Nzoza (*village headman*).

Question: 'How do you manage about witchcraft cases nowadays?' 754

'We judge them openly but we do not have them written in the court book. When "a defender" has seen his fellow throttle someone, he tells us, and we judge that witch. It is "the defenders" (*abamanga*) who see the witches. Perhaps "the defender" comes out of his house by night and calls out: "I see so and so throttling so and so! Listen to-morrow."' 627

'Yes, that happens nowadays.

'When someone tells us in this way we agree; the witch is driven out. Yes, even though he denies it, we say: "You are a witch. You are a thief. Even though you do not admit it, get out of the country." But formerly they went to the ordeal.'

Question: 'Now you just accept the word of the defender?'

'Yes, formerly if a man denied guilt when he was accused he went to the ordeal, and the *umuafi* "caught" the witch. Now since the Europeans have forbidden the use of *umuafi* we accept the word of "the defenders". Look, they (the defenders) *are* witches. Yes, in dreams.' [695]

Question: 'What about the man who accused the wife of Mwakibela?'

'He denied it. He said: "I did not see her", so on that account we said: "Since you have slandered her you must pay thirty shillings." But had he really seen her and told us properly we would have overcome the woman in argument and divorced her from her husband, but he denied it, saying: "I did not see her", and we all said: "The woman is not a witch; who has seen her?"

'If a woman is divorced for witchcraft there is no fine, the husband gets back his cows, that is all.'

Question: 'And the friend of Mwambopeta?'

'He was really a witch. They said: "You, Mwambopeta, we will convict you of witchcraft yourself if you are friendly with him."

'And if a man is fined because he has accused his fellow of witchcraft without seeing him, really, we do not write that in the book either.

'No, *umuafi* is not used; the Europeans and the chiefs and the village headmen have strictly forbidden it.'

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33. SETTLEMENT OF DISPUTES IN CHRISTIAN VILLAGES

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a. *Christian suing a Christian*

Mundekenye (appointed by the Church to settle disputes in villages on Itete mission land).

'Nzangalofu (a Christian elder) accused Jonah's son, Lwimkio, of making love to the wife of Nzangalofu's son, Nkisu. I (Mundekenye) was trying the case between Nkisu and Lwimiko. Lwimiko denied everything, but Nkisu's wife said: "Yes, he was making love to me; he did so on three occasions." I gave judgement, saying: "You Lwimiko, are guilty, because the woman admits it," and ordered Lwimiko to pay a cow. Lwimiko refused, so I took the case to the Court. I reported my decision and Lwimiko's refusal to pay. The Court asked Lwimiko why he refused to pay up when the woman admitted their guilt, and ordered him to pay a cow.

'I reported the case to Mwangomo (the chief in whose country Mundekenye lives), but as it was quite clear I took it direct to Court. Difficult cases I take to Mwangomo before they go on to Court.

'Nzangalofu and Nkisu brought the case to me. I called the elders of the Church to be present at the hearing of the case. The congregation notified Mwakapelela (the European missionary who lives on another station) and he ordered that Lwimiko should move off mission land. Lwimiko and Nkisu had both built in Mpanda (a boys' village on mission land).'

b. *Arbitration between Christians*

Asagwa (Christian deacon in Itete).

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'Magogo accused Amanise of stealing a cloth belonging to him, and brought Amanise before his fellows. He brought him to Rheuben, *sic!* whom he lives.

'Amanise denied the accusation, so the case was taken to Mundekenye (*vide supra*). Mundekenye tried the case with "all the congregation" (i.e. elders and deacons and anyone who cared to attend the court) and found Amanise guilty. The case was then taken before the missionary who ordered that Amanise should be fined 5s. and suspended from membership of the Church. He also ordered that should he refuse to pay he should move off mission land, because this was the

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second occasion on which he had been found guilty of theft. (The elders of the congregation had suggested turning Amanise off mission land immediately, but the missionary advised giving him a second chance and fining him.)'

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34. SETTLEMENT OF DISPUTES BETWEEN PAGANS AND CHRISTIANS

a. Christian suing a pagan

Tonjalaga (Christian man).

691 683 'Adinile (a Christian elder) and Kojobanabatwa (a pagan) had a dispute. Cattle belonging to Adinile and his fellows ate Kojobanabatwa's crop. Adinile went to drive the cattle out of the field and Kojobanabatwa met him as he was driving them out. Kojobanabatwa swore at Adinile. So Adinile got angry and went to the chief; the chief took the case to Court and Kojobanabatwa was found guilty and ordered to pay 10s. He paid up and the case was finished.'

b. Arbitration between pagan and Christian

627 686 'L. (a Christian preacher) when he was visiting the Nguni[1] in the bush country bought rice from a pagan Nguni, Manana, and promised to pay him later on. He was a long time in paying his debt so the Nguni went to Ulindula, an elderly Christian living near L., saying: "L. has my shilling. He took my rice." L. agreed that he owed the Nguni a shilling; he said that he had not yet got the money, but would get it very soon. The Nguni went home and after some time, as he was not paid, he came again. Ulindula tried to pacify him. The Nguni said: "If the case defeats you, I shall go to Court." So Ulindula called his fellows Rhwabwa and Hossah to pacify the Nguni, and the latter agreed to wait; but still L. did not pay up. So when the missionary visited, the Nguni took the case to him. How it was decided (by the missionary) no one knows.'

c. Pagan suing a Christian

Mwaisumo (cited).

691 683 'Mwasenge, a pagan man, has a young son who was once bathing in a stream when Asangiye, a Christian, came down to bathe also. Asangiye said to the boy: "Get out, I want to bathe." The boy replied: "See, I was bathing here first", at which Asangiye got angry and beat the boy.

'Then Mwasenge and his son hastened to Mundekaye's court

[1] There are one or two villages of Nguni immigrants in the strip of unoccupied bush country between Selye and the Lake-shore plain. They mix very little with the Nyakyusa.

2: Wilson E-5 (1934-1938)1957 FN17 Ngonde FN17
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come him, it does not wish to come out. And although the faeces are firm they are the corpse. Because we bury a corpse underground, and faeces also go underground to the shades. They disappear by night, that is the shade. If someone excretes faeces and finds it in the grass we say: 'The shade has caught hold of him.'

QUESTION: Are faeces associated with sexual intercourse?

MWAKALEMBA: Yes, the shade does both things, he causes diarrhoea and sexual intercourse. If you defaecate firm stools that is not the shade, that is the food we eat, but watery diarrhoea which troubles you repeatedly at night—that is the shade. If you have diarrhoea for three days people say: 'The shades have hammered you' or 'The shade has caught hold of you.'

QUESTION: Madness?

MWAKALEMBA: That is the shade because it says: 'Since you have me in your belly, and they have not treated you, I cause this—these faeces are the corpse. A madman defaecates and catches hold of his faeces, perhaps he eats them, perhaps he binds it up in the grass and catches hold of it. It is the corpse.'

Kakune, the doctor, also interpreted the puberty ritual as being, in one aspect, the transference of a girl from her father's group to her husband's and, like Kaitile and Mwakalemba, he identified sexual desire and potency with the shades. He said:

At puberty a girl has left her father's and has gone to others; if she dies he to whom she has gone buries her.

QUESTION: Where does the blood of a woman come from?

KAKUNE: If the girl is unmarried, from her shades; they create her blood, but in the ritual we treat her so that she moves to my place, she comes to my shades; the blood of a married woman is created by my shades and hers together. And the 'blood' of a man [i.e. semen] also comes from the shades.

QUESTION: Do the shades reveal themselves at birth?

KAKUNE: Yes, because if I am angry or my father is angry I do not beget a child, but when he has prayed I do so. If I am angry with the woman and she has caught hold of me and injured me, then we do not have a child. The accident [wrought] between the woman [who gave us] her father who prays. Then we have a child.

QUESTION: Where does the power to bear and beget children come from?

KAKUNE: From the shades, you have the shades in your belly. If they are not there you are all like women in the house, you cannot have an erection, but when the shades work, you have an erection.

QUESTION: Whose shades are present at intercourse?

KAKUNE: Mine, the man's and the woman's, we both have them,

2: Wilson E-5 (1934-1938)1957 FN17 Ngonde FN17
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scrapes bananas when she is menstruating, or conceals that she is menstruating and we have intercourse, then my legs are tired, but I do not have diarrhoea, because it is my blood; she is my relative (*akowa pesenge*), she is my wife, her blood and mine are one. But when she has lain with a man in the bush there is his blood; I have diarrhoea to get rid of it; the food which she cooks for me is dirty, she has made it filthy, I have diarrhoea and get rid of it, she oversteps me. And also if she has concealed that she is menstruating and we have intercourse, I am overstepped. To overstep is to insult—but since the blood is mine I do not get rid of it. That menstrual blood is very dirty!

If I have always been all right and strong, and I find that I get tired walking and hoeing, I think: 'What is it? See, always I was all right, and now I am very tired.' My friends say: 'It is women, you have lain with one who was menstruating.' And if I eat food and start diarrhoea they say: 'It's women, they have committed adultery.' My wives deny it. We go to divine, and one is caught; if she agrees that's that, but if she denied it, formerly we went to the poison ordeal. The woman drank alone, not I. If she vomited then I was defeated, the woman was good, but if it caught her then her father paid one cow.

What we feared greatly in the old days, Mwaipeja, was war. We feared to die. For if my fellow in the village committed adultery with my wife then, when we went to war, we both died; if we went to fight at Mwangomo's [a neighbouring chiefdom], both he and I would be speared. Then people were astonished and said: 'Why, have so-and-so and so-and-so died? Perhaps they both lay with the same woman.' For this reason we drove adulterers from the village, and for this reason the chief was angry with an adulterer, saying: "This is my place! Why do you kill my people!" '

Others confirmed Mwembeputa's statement that adultery led to death in battle:

Formerly, when there was war, if your fellow made love to your wife in secret and you all went to fight, you died on one day on account of the woman.

Mwandisi linked the disquiet in a man's belly with the anger of the shades meant there.

If a woman has gone behind the house with another man and comes and cooks food for her husband, blowing up the fire and cooking for him, then the food turns round in his stomach and says: 'Is this my kinsman?' She made friends with others behind the house and cooked for them [i.e. committed adultery]. So then the man develops diarrhoea because the food turned round in his stomach. He falls down on the road, he falls down in battle.

2: Wilson E-5 (1934-1938)1957 FN17 Ngonde FN17
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762 the wife of Mpoma, but about this I do not know much. When they
[718] stopped speaking Kanyamale was ill. Then her husband charged her
759 with witchcraft and she said: 'What is the case about? I have been ill
since we came from confusing anger.' Then Kanyamale grew milky
and gathered up her mats and went with them to her child's place.
Mpoma said: 'I must follow her,' but his fellows soothed him and he
turned back. Then he borrowed a spear from his fellows and went to
drive off the game which were eating his crops. When he found no
animals he went home. On his return, when he was still outside, he
heard the wives whispering about some case. He asked them to open
the door for him, but they were silent and did not open the door of the
hut. Then he pushed it open. When he entered the hut he closed it and
he cross-examined the wives, asking what they were talking about. One
said: 'I was just asleep.' He said: 'With whom were you speaking?
You are hiding a man in this house.' One woman got up immediately
and opened the door. Mpoma cross-examined them hotly. He said:
'Why did you open the door if indeed there is no man in the hut?'
Mpoma got in a passion and went elsewhere. He returned again and
said: 'Marry the child. I will not destroy him,' and he went away alone.
• [27] He took the case to Mwakisinya, the village headman, and lost it. Then
the court said: 'You get the children. Let them come here, though their
mother is not here.'

767 Later on it was like this: Mwakisinde went to attend to the medicines
754 to give to the sick man to drink; they began by putting powdered medi-
cines in a pot, then they put in some water, then they put in three sorts
of powdered medicine, one black and two red. Mwakisinde, because
he was the doctor, began; he put in the water first. Mpoma, the senior,
followed him, then all the others. When the water boiled, they stirred
up porridge with a spoon, then they gave the sick man some to drink,
and the relatives drank. If there were one who was working sorcery
against his fellows, he would die when he drank that medicine. But the
sick man, before he drank this medicine, drank something else. When
the water boiled, they mixed a medicine and smeared themselves all
over their bodies.

3: Mackenzie M-5 (ca. 1925) 1925
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residence there, I never locked my doors, and the only theft of which I had to complain was the pendulum of a clock taken from an open building!

Murder.—Murder is, from the native point of view, a much less serious crime than cattle stealing. But it should be remembered that British law calls crimes murder which are not so called by the Konde. A man who kills his wife's paramour has not committed murder: he has exacted a just revenge, and no more. In a case of real murder, the murderer or his friends usually pay a fine, or rather a compensation, of up to ten head of cattle; and the loss to the family of the murdered man is further made good by the other family handing over a daughter. This girl must never be spoken of as a substitute, for that would cause her children, when she has them, to die. It is needless to add that under British law compensation of any kind to the family of the murdered person does not acquit the murderer. What follows, therefore, is purely native law, which, if administered at all, is administered only when there is reason to believe that the police will never come to hear of it.

When a murder was committed, the chief directed the friends of the murderer to bring him for trial, but if they chose to put him to death themselves, the case was ended. Should it be impossible to discover the murderer, a friend of his, it hardly mattered who, was put to death, and a wide-extending vendetta might be the result. When the law is satisfied, a formal reconciliation between the two families takes place. Under the guidance of the medicine man, who is

3: Mackenzie M-5 (ca. 1925) 1925
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master of ceremonies on all such occasions, a sheep, provided by the family of the murderer, is killed, and taken hold of by the parties, while the doctor divides the carcase into two parts, each side taking its share. Medicine is poured into a pot, and a red-hot spear is plunged into it. The carcase of the sheep, cooked with this medicine, is placed upon banana leaves, and the feast of reconciliation is partaken of, along with beer which also has been doctored. The reconciliation, however, is not complete until the girl has been handed over: until that is done, the feast has only stayed action on the part of the murdered man's relatives. If the murderer is not known, the relatives of the victim drink a medicine, without which, if they happened unwittingly to drink water in the culprit's house, they would themselves also die.

The murder of a pregnant woman is a very serious matter, for it is really a double murder, and the chief has to be compensated for the loss of dependents. It is more heinous to murder a woman than a man, for the woman, being dead, bears no more children, and loss to the community results.

For accidental death there are numerous regulations. If a man dies, or is killed, while in the employment of another, or on a journey with him, compensation must be paid to the relatives. There is no feast of reconciliation, for the thing was not done in malice. When a person is killed by an ox or a cow, the owner pays a cow, and kills the offending animal, lest it lead him into further trouble and expense of the same kind. If one is cutting down a tree, and some one is killed by

3: Mackenzie M-5 (ca. 1925) 1925
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682 754 be convinced that the real facts are otherwise than as I have stated. The clumsy methods of murder favoured by the cleverest of European criminals take an inferior place before the successful malignity of this kind of thing.

683 754 627 *Witchcraft.*—No crime is regarded with so much abhorrence among Bantu peoples as the crime of witchcraft. It is a crime against the whole community, anti-social, destructive; and the punishment, in many cases, was death. That punishment cannot now be inflicted, but a recent Ordinance against pretended witchcraft has given much satisfaction to the people, even although the punishment is less than they think the crime demands. To them there is no pretence about it; it is a grave reality. If the poison cup proved a person guilty, he was immediately attacked with any weapon that came handy, and as a rule he was dead before he reached the end of the gauntlet; but if, as now and again happened, he got off alive, he lost no time in getting away to another district. In the not so very remote past, the guilty person was burned to death in his own house, and not always did his family escape a like fate. A special punishment was reserved for witchcraft by crocodile. This particular crime consists in bewitching a crocodile to kill an enemy. The criminal, when discovered, was put into the water in a large fish-trap, and left there until a crocodile came and made an end.

684 *Adultery.*—This offence is said to have increased greatly since the coming of the white man, who will not permit the death penalty to be inflicted. But the

3: Mackenzie M-5 (ca. 1925) 1925
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781 a conation which passes over into the physical motor response" (Tansley). The image in the mind, of the divining rod acting in the manner conceived, tends to become a physical fact, and the rod comes to a halt in obedience to a previously formed decision, of which the operator is, in most cases, not consciously aware. Nevertheless the opportunities for deception are many.

Ifipendo, the lot. The lot is resorted to in a variety of cases, but its application is much more limited than that of divination.

781 I. When divination has decided that an illness is due to poison, the lot is invoked to find the poisoner.
627 Little pieces of dough are kneaded into as many tiny cups as there are persons suspected. Into each is put a small quantity of *muafi* (the poison used for the ordeal), and the suspected persons are then invited to take each the cup that he selects for himself, the preparations having been made, of course, in their absence. The guilty person is he who takes the cup in which the poison remains unabsorbed into the dough, the others being assumed to have vomited. This might just as well be called a way of undergoing the poison ordeal, but as it is called *ifipendo* it is included here.

II. In cases of disputed inheritance no poison is put into the cups, but a little dry flour. The claimant who selects the cup in which the moisture from the dough has penetrated to the dry flour is declared to be the rightful heir.

781 When the rain stops, and no natural cause can be assigned, it is assumed to be the act of some person

3: Mackenzie M-5 (ca. 1925) 1925
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unknown. Now when a common man stops the rain, he must first have obtained the assistance of his chief; and the chief, being discovered by the method just described, must take measures to have the evil undone. 787

III. If a question arises as to the ownership of some article, small sticks are set upright in the ground. The claimants sit each opposite his own stick, and he whose stick first falls, if it falls towards him, is the rightful owner. But if the stick falls towards another person, then that person is declared the owner. Finally, if goods of any kind are divided into lots, one lot for each of a number of persons, sticks are taken, marked to correspond with the lots. Each shareholder picks out a stick, the marks, of course, not being shown to him, and gets the goods which correspond to the marks. There is no appeal, the decision of the lot is final.

The poison ordeal, though now prohibited, and administered only in secret, was, until European government began to put it down, so common that a description of it comes in appropriately in any chapter dealing with native life; and as it has been referred to here already, the method of administering to individuals will be given now, leaving administration to a whole community for the chapter on "Witchcraft." The ordeal was applied for reasons grave or trivial, from an accusation of murder down to a petty family quarrel of no importance except in a moment of ill-temper. Both parties to a quarrel or an accusation went to the doctor, and stated their case. He took a piece of bark of the *msasi* tree for each, raised it a little in 787 627

3: Mackenzie M-5 (ca. 1925) 1925
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his hand and let it fall to the ground; if one turned round in falling and the other fell without turning, the doctor knew beforehand which was the guilty person—he whose bark turned round in falling. The poison was then prepared from the bark by the doctor, by whom it was administered next day. The one who vomited was in the right, the other in the wrong.

Assuming that the poison was honestly administered, that is to say, that the doctor did not give a strong mixture to one and a weak to another, which he very probably did in many cases, must it be assumed that the result was merely fortuitous? Is it not a psychological possibility that the consciousness of guilt in the one case, and of innocence in another, causes the poison in the stomach to act in the way that generations of belief in its efficacy has led the whole community to expect that it would act? I do not suggest that this happened in all cases. No doubt the generations have seen countless cases of tragic miscarriage of justice; on the other hand, so many confessions have followed conviction under the ordeal, that it is difficult to believe that in all cases the discovery of the guilty person was a mere fortuity.

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at all, it is done in secret. But other methods are in use that are not so easy to detect. A suspected person is mercilessly beaten, and there are many who have, under stress of such thrashings, confessed their guilt, lest the thrashing end in death. In the good old days, before the Europeans began to interfere, guilty persons might be burned to death with all their family. To-day, if the chief is afraid to take more drastic steps, the suspected person is warned to depart. Coming out in the morning he finds at his door a banana stem, with leaves tied to the top; and if he refuses the hint, he may be mobbed the same day. Native law gives him the privilege of challenging the poison test, and the unhappy chief in that case must either agree and risk being denounced to the magistrate, or refuse to apply the test and withdraw the charge. The lot of the chief who has to steer his way between native and British law is not always a happy one. In the case I am supposing, if he agrees to the poison test in the hope of escaping the attentions of the police, he may find himself with two deaths on his hands, for both accuser and accused must take the test, and although the poison is usually administered in a weak decoction, still accidents have been known to happen.

A plague of mice is also brought on by witchcraft. At Karonga, a man called Ndambasya, still living at Mfuru, on the Rukuru River, possesses this gift. His grandfather was put to death for the offence, but Ndambasya pursues his nefarious practices under the ægis of the British Government, which is far too

4: Tew E-A (no date) 1950 FN17 Ngonde FN17

754 witches, who use their power beneficently and spend their dreams in efforts to counteract the aggressor witches, *avaloi*, who use their power maliciously. The great commoner is the strongest of the former type, and the 'defender of the village'. A man 426 who earns universal unpopularity is subject to a spiritual attack from the 'defenders', and is liable to fall sick from the blast of unpopularity. Belief in this efficacy of the 'breath of men' is one of the sanctions of the accepted social order.[1]

Only magic is believed to have power to punish wrongdoers who are neither kinsmen nor members of the same chiefdom. Magic exerts an influence on the behaviour of kinsmen and affines. The witchcraft of a neglected wife may cause a man to fall sick, or that of his father-in-law may harm his children.[2] The power of witchcraft never acts between relatives, though it might between husband and wife.[3]

754 An aggressor witch was reported in the old days by the great commoner to the chief, who ordered the poison ordeal. If the accused failed to vomit (the dose was seldom 627 fatal), he was proved guilty and killed or exiled, all his cows and property being taken by the chief and the victims of his aggressive witchcraft. If a private individual accused another, both were put to the ordeal; if both vomited, the accuser had to pay two cows to the other for slander; if either failed to vomit he was punished as guilty. The ordeal is now illegal, but men accused of aggressive witchcraft still find it best to fly the chiefdom. Great commoners normally used their witchcraft powers to protect their chief from attack, but if he erred they would join in the attack on him; the nobles of Ngonde had power to exert a similar constitutional check on the Kyungu.[4]

763 If death by aggressive witchcraft was suspected, it was proved or disproved by a routine post-mortem examination and by subsequent consultation with the diviner.[5]

Birth

844 A child should be born in its own father's house. A difficult birth is a sign of the guilt of adultery, and is eased by confession.[6] A few days after the birth the mother is 845 anointed, shaved, and resumes her household duties. She later goes on a visit of some 851 weeks to show the child to her own parents, returning to her husband after celebration by both sets of grandparents, and exchanges of food and hoes. The birth of twins was a great misfortune, requiring the segregation and ritual purification of both parents.[7]

Initiation

861 There was no puberty or initiation rite for boys. The initiation of a girl was really a pre-marriage rite. She went through a complicated rite to ensure fertility, in which the husband took part. The initiation lasts some months, and includes several exchanges of food between the families of the girl and her betrothed husband, and ceremonies in which her girl friends of the same village and his friends of his village take part. The girl is tested for virginity during the ceremonies. If she is not betrothed before puberty the initiation is carried out in a modified form, but the full significance is lost.[8]

[1] Wilson, s. 1936, p. 277.
[2] Ibid., s. 1939, p. 36.
[3] Wilson and Hunter, 1939, p. 10; Mackenzie, 1907, pp. 40–3.
[4] Ibid., pp. 42–6. According to H. H. Johnston, if the children died in succession the father was executed to kill himself, but it is possible that he is canvassing a custom of the Southern Tumbuka (1897, p. 477).
[5] Ibid., 1903, p. 51; Wilson and Hunter, 1939, p. 11; Wilson, s. 1936, p. 278.
[6] Ibid., p. 278.
[7] Ibid., s. 1936, p. 91.
[8] Johnston, 1897, p. 443.

5:Wilson E-5 (1934-1938)1938 FN17 Ngonde FN17
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vary in different circumstances. Millet and rice, the two most valuable crops, belong to the man and are stored by him; so that the division of a millet or rice garden into plots and their assignment to different wives is rather a division of labour than of property. But of all other crops the woman on whose plots they have grown is an effective owner. She stores them herself in her own house and no other wife of her husband can touch them; it is only with him that her rights are in any way shared.

The main use of the crops which the Nyakyusa grow is to provide food for each separate household group. Next in importance is the provision of food and beer for hospitality, and for the making of gifts both in everyday life and on special ceremonial occasions. And, finally, there is the barter or sale of surplus crops to obtain salt, pots, clothes, cattle and to pay tax. Each married woman, therefore, first uses her own crops to feed her husband, her own children and herself. If she is the only wife then she cooks for her husband every day, but, even if she is one of many, she is yet careful to cook for him frequently, in order to keep his affection and the various advantages which go with it.

When cooking for her husband she must, when necessary, prepare sufficient for guests, for a man very often has friends and neighbours eating with him; and if he wishes to make a gift of cooked food, she cooks it for him from her own store. To provide meals for him and his guests and cooked food for gifts is an obligation which she normally fulfils quite willingly, as we have hinted above; she may be fond of him; it is in any case to her interest to play her part in the co-operative relationship which binds them together and from which both alike benefit. He hoes for her and builds her house, he gives her a share of the household milk, which he himself controls, he sleeps with and is gentle to her; he has, without the aid of any legal, moral or conventional sanctions, a great hold over her, as she, on her side, has over him. But, if either fails to play their part in willing co-operation, then there are, for both alike, these other sanctions to fall back upon. A quarrel develops between them and leads to violence, perhaps he strikes her, perhaps she viciously repels him, one night, from her bed; and then the immediately injured party appeals to the neighbours for support. They discuss the matter, censure one or the other, and try to make it up between them; if they fail to do so the case may go to Court and one will then have to pay compensation to the other. Or it may happen, without any violent quarrel, without any formal appeal to the neighbours, that one of them becomes aware that his conduct is provoking their mockery and criticism; and then in shame he mends his ways. Or, finally, one of them may fall sick and suspect that wrong-doing on his part has been followed by spiritual retribution in the form of witchcraft.

A woman, then, uses her stores of food to cook not only for herself

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favourite. What they said about her being, perhaps, his favourite was just their way of putting it." 421 515

Before passing to the discussion of the disposal of surplus crops we must dwell a little on the importance of a fair division of land between the several wives of a polygynist. Not only garden plots but also the bananas growing on the homestead are divided between them. Each wife is allotted a number of banana stems and is responsible for keeping their roots clear of weeds and she is also expected to weed and sweep the adjacent portion of the open space (*ilubingilo*). In the sweeping her husband will often assist her, her fellow wife will not. The bunches which grow on her own banana stems are her property and not even her husband will cut them without consulting her, save in exceptional circumstances. In every polygynous household, then, a division of garden plots and bananas is made between the wives, and, as it is made by the husband, it is a most important element of their relationships with one another.

For every man with more than one wife has a favourite, and, if he allows his affection for her to express itself in an inequitable division of land, then there is trouble in store: "Each wife is the owner of a plot (*ishipaka*) and each harvests and weeds it and keeps the food separately. The wives help each other if friendly but each wife must have her own plot—a maize plot, a bean plot, a cassava plot, a plot of sweet-potatoes, and so on. The bananas also are divided between the wives.

"A polygynist when he hoes his gardens is always afraid to give to any one wife a bigger plot than to another. For it is thought that the wife who gets the smaller plot will whisper complaints of her husband among the people; and whispering complaints of a man brings witches to kill him. It is feared that in such a case, either the husband or else the favoured wife will be killed (*by witchcraft*). *In consequence a man is* always exceedingly careful, in dividing his garden into plots, to treat his wives fairly. But even so he will perhaps give to the wife whom he loves the plot with the best soil! And it happens sometimes that a polygynist's wife, when given a smaller plot than her co-wives, will sulk and refuse to plant: 'Why,' she asks, 'do you give me such a small garden plot? Did I not cook for you while you were hoeing?' And, if her husband then loses his temper and strikes her, she will make a case before the neighbours. And they will say to him: 'Friend, you should make a just division, you will only set your wives against one another by not doing so and make them kill one another.' By this they mean that if one wife is angered she will bring the witches to kill her fellow wives!

"And if a woman is restless with her husband and is herself considering leaving him then she will be forever going and complaining to her 586

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"Why with cassava?" I asked "Because the husband thinks of cassava as a security against famine; if a famine comes he takes his *bwongo* cassava and gives some to each of his wives."

"And why with bananas?" "Because if he has bananas of his own then when the chief sends the great-commoner round to collect bananas for guests, or to send to the hospital in Tukuyu, the man cuts one of his bananas. He realises that, as he has two wives, if he takes a banana bunch from one of them she will be angry and wonder why he cut her bunch and not that of her fellow wife."

"So it is only polygynists who keep separate *bwongo* bananas?" "Certainly, no monogamist would ever do so."

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"A man named Mwaisaka," he told me later, "once disputed with his wife over the selling of maize. They had just begun harvesting the crop when the woman told her husband that she intended to take some of the maize to the shops and sell it and buy some cloths; for her child was naked and she had neither cloth nor skin to carry him in on her back, she had to hold him in her arms. Mwaisaka, however, told her to wait a little until all the maize was harvested, when he would divide it up. His wife thereupon protested that the crop was their joint property and that he himself could take some for sale whenever he wished, so why not she also; and she pointed out that many other people had already begun to sell their maize and buy cloths. So they quarrelled and Mwaisaka struck his wife, who then ran complaining to the great-commoner. The great-commoner heard the case and judged that Mwaisaka was in the wrong because his wife had no skin for carrying her baby and was in trouble therefore. If, he said, she had not been in such trouble over carrying the child they would have given their opinion against her for refusing to agree with her husband's proposal to wait and finish harvesting first, but as it was they thought that Mwaisaka was in the wrong; no division of plots or crop had been made and the food was their common property. And Mwaisaka admitted that he was wrong." "Did he pay his wife any compensation for the blow?" I asked. "No, they reconciled them to one another."

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"And if a man," I enquired further, "takes some of the food which belongs to himself and his wife jointly and sells it without telling her, will she make a case against him?" "She may, but if she is a gentle wife she argues it out alone with her husband; she asks him why he did not consult her, for there is now but little left and she wonders what they will eat. And her husband, if he is a sensible man, agrees with her and admits that he was in fault. But if, instead, the man makes out that he had every right to take it, for the food is as much his as hers, and if he is indignant at her protest then that attitude will bring a quarrel between them."

8: Wilson E-5 (1934-1936)1936 FN17 Ngonde FN17
Nyakyusa

631
476 all, hunting is organized like warfare and fishing is a joint endeavour, both ordered by the chief.

471 Every chief has a title of ownership (*ubwene nakya*) to the land of his
622 chiefdom and can evict any man he pleases, (giving him another plot), if he wishes to build there himself; but his people also have titles of ownership to it, both collectively, under the leadership of the great commoners, and individually, each man to his own ground. It is the great commoners who, in consultation with their neighbours, give to the sons of each village land on which to build; it is they who, together, finally fix the boundaries of the young men's villages at their "Coming Out;" it is they who, again in consultation with their neighbours, grant land to strangers who ask for it, though they must notify the chief and get his approval before doing so.

● 627
692 As the single great commoners settle disputes within their own villages so the chief and great commoners together hear and decide cases within the chiefdom. Many of these legal actions are now settled in the Courts, but not all of them; and, even when cases are going to Court, preliminary hearings commonly take place before the chief, first. Cases are conducted and witnesses interrogated by chief and great commoners together, and the decision which the chief pronounces is an expression of their general opinion.

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629 Among the great commoners there is an order of seniority. The leaders of the two senior age-villages of the chief's own men play a prominent part at his "Coming Out," they each have a pre-eminent authority in one side of his chiefdom, and the other great commoners rank as their juniors, some on one side, some on the other. In the old days the two senior great commoners each led a *wing* of the chiefdom in war.

622
754 The two most effective checks on the power of a chief are migration and witchcraft. Military strength used to depend upon the number of a chief's adherents, to-day the scale of his salary is similarly dependent; men are quite free to move, and there is a constant flow of adherents from unpopular to popular chiefs. But unpopularity is most feared in its spiritual form of witchcraft. We have seen already that an adverse current of opinion is believed to act invisibly, as the "breath of men," against an unpopular member of a village and to make him sick. So also the adverse opinion of a single village or of a whole chiefdom is believed to have power against a chief, to bring sickness or even death upon him. As in the single village, so in the whole chiefdom the great commoners are the prime sources of this spiritual power; they are believed severally to protect the members of their own villages and jointly to protect their

9: Wilson E-5 (1934-1955) 1959
FN17 Ngonde FN17
Nyakyusa

Scotland—and it is with their organization that we are primarily concerned.

Each denomination is divided into congregations, local groups living in villages surrounding a central Church which usually has its own pastor or minister—European or African—in charge, though the shortage of men and funds after 1914 meant that one minister was sometimes in charge of two congregations. For the fifteen congregations of the three Churches mentioned there were eleven ministers in 1935, three of them Africans, and the congregations varied in size from just over 600 to 3,000 members. They included communicant members—that is, adults who had been baptized, and the children of Christians who, after having been baptized in infancy, were confirmed during adolescence—children of Christians who had been baptized but not yet confirmed; 'hearers' and catechumens who were undergoing a two or three years' period of instruction before baptism, and members under discipline who, because of some serious breach of Church law were not, for the time being, admitted to communion. Women members outnumbered the men by more than three to one in the congregations in Ngonde (where many men were away as labour migrants) and by three to two in the Moravian congregations in BuNyakyusa.

The functions of the congregation are worship, evangelization, religious instruction, and sometimes, general education and welfare. Each congregation chooses elders from among its members and they, together with the minister, form the 'Session' or Church Court which deals with matters of discipline and administration within its area, as well as discussing matters of Church policy which may later be brought up before a higher court or council.

Both men and women are eligible for office as elders, but their duties are somewhat different. Each male elder is in charge of the Christians in a given area, usually those living in one age-village. He organizes services in the village, often taking them himself, and choosing suitable people from among the residents to help him. He instructs candidates for baptism, holding the weekly classes for 'hearers' and catechumens; he visits the sick; above all he must try and compose quarrels among his people. It is customary among pagans for a husband and wife who quarrel to take their dispute to a senior kinsman or to a neighbour; among Christians such disputes are usually taken to the elder, since the Church is immediately concerned in maintaining the marriage bond. The

9:Wilson E-5 (1934-1955) 1959
F3017 Ngonde F3017
Nyakyusa

elder watches over the morals of his flock and it is his duty to report to the Session any breaches of Church law among his people. Through him the cards entitling members to attend communion are distributed, and cards are withheld from those whom the Session has agreed must be suspended from membership. Each man has, on the average, 125 people to care for. The women elders organize the women's weekly meetings, and take parties of women on preaching tours in pagan villages. They are the leaders in any charitable activities of the congregation and in the instruction of a Christian girl at her marriage. A woman elder settles disputes between two women, and in family quarrels she is often asked by the elder in charge of the village to help him to reconcile the couple. She is also a supervisor of morals and reports to the local elder if she 'hears any woman speaking like a pagan'. Deacons are elected like elders and are primarily responsible for the collection of Church dues and the administration of Church funds, but in a village in which there is no elder a deacon will carry out some of his duties.

In practice, then, each local group—a Christian village or village section—has its chosen leader, a male elder or deacon who conducts daily prayers in the local school house or his own home, and also fulfils many of the functions of an assistant village headman, arbitrating in disputes and acting as the spokesman of his village section. The traditional organization of the age-villages, in which an individual had some choice as to the village he should join, and was not bound by kinship connexions, makes an adaptation to villages in which those of the same faith live together easy. It is noticeable that the Pentecostal and Watch Tower converts build their own village sections apart from Moravians or Lutherans. And since the traditional village leaders are chosen, not hereditary, it is very easy for a leading Christian to become an assistant headman, more or less formally recognized by the village headman named at the 'coming out'.

At first the teachers were more directly under the supervision of the missionary than of the congregation, being selected by him and paid by the mission, but in the middle thirties, when funds from Germany ceased coming to the Moravian and Lutheran missions, the payment of village school teachers fell on the congregations of those denominations. Each village wanting a school had to provide a building, and in this pagans and Christians often co-operated, for many pagans also wanted their children to

lib:Gulliver E-5 (1954-1955) 1958 F'017 Ngonde F'017
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Security of tenure has continued into European times, and although perhaps weakened slightly in one way through the exaggerated powers which accrue to modern Government-supported chiefs, it has been strengthened by the modern peace and rule of law and the more efficient system of justice provided by the established local courts. According to G. Wilson (Wilson, G., 1938, p. 32) the increase in the movement of individuals between villages in earlier European times (i.e., up to about 1940-45) directly caused a lack of attachment to individual plots, and thus security of tenure was not considered particularly important.

The new situation of land shortage does not affect the basic position, or rather, by producing a high scarcity value on land, it has brought about an intensification of individuals' rights over their holdings. No longer does a chief or headman attempt to commit such illegal acts as the seizure of a villager's field, so long as that villager is not afraid to publicise the affair. A man is not, and cannot afford to be, prepared to lose his field, for he cannot replace it with any certainty, either in a convenient location or elsewhere. A headman may sometimes bring strong pressure to bear on some of the men of his village to try to persuade them to give up portions of their land to assist a newcomer or a landless neighbour, but a villager can and does refuse and there is no legal authority which can override him here. As the land shortage becomes more obvious and more acute as men become less willing to allow their holdings to be touched for any reason, by anyone. The re-allocation or a "coming-out" ceremony appears to have been dropped nowadays and thus a man holds his land undisturbed until his death, when a person by inheritance to his son. There are cases, now where grandsons of the original holder occupy land through undisturbed and undisputed inheritance. A man can, on his wishes, loan a kinsman or friend a plot in his holding, or he can make an outright gift. The principal reservation which remains is that a man must continue to live in the village in order to retain these rights; he must relinquish them if he permanently goes to live elsewhere. Nevertheless, the land of a well-established villager would be kept for him pending his hoped-for return, for if he has left in underage and fled because of suspected witchcraft, then he may be persuaded to come back after a time. The headman and his neighbours should in fact persist in their attempts to persuade him, even to the use of force, for this is not only a moral duty of age-mates and fellow-villagers but is also an effort to remove the implications of their alleged witchcraft and anti-social conduct.

Once, therefore, a man obtains land he has absolute rights in it during his continued residence in the village. Especially today, older men seldom shift their homes and almost all land is now held on a tenure which will be passed on by inheritance.

Boundary disputes are few. Usually, and increasingly, village boundaries are well known, and field boundaries invariably are. During my field assessments in the sample villages, I never met any difficulty with my local teams in quickly establishing the ownership and exact limits of any plot. Boundaries are usually marked by small ridges of accumulated debris or by narrow paths, and these form an intricate and irregular network throughout a village's arable area. They are so well known that there is very little scope for a greedy man to attempt to encroach on a neighbour's holding at boring time. If minor disagreements do arise at that season they can be immediately settled - by appeal to neighbours working nearby if necessary - and the headman or his assistant may well not be called in at all.

1. This is the case in the Lake Rukwa, in some of the more remote Highland Northern areas the only [illegible]